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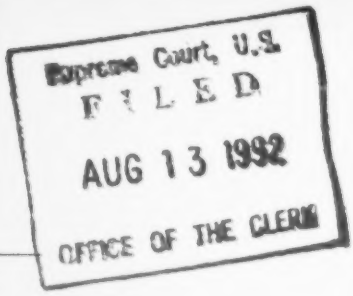

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

CARVEL GORDON DILLARD,
Petitioner

versus

SECURITY PACIFIC CORP.;
MERRILL LYNCH, PIERCE FENNER & SMITH, INC.;
SECURITIES INDUSTRY ASSOCIATION, INC.;
SECURITY PACIFIC BROKERS, INC.;
FINANCIAL CLEARING & SERVICES CORPORATION;
JENKINS & GILCHRIST (A PARTNERSHIP); and
JENKINS & GILCHRIST (A-PROFESSIONAL CORP.)
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

VOLUME 2 of 2 VOLUME APPENDIX

Carvel Gordon Dillard, pro se
903 SW Central
Grants Pass, OR 97526
(503) 479-0098

CIVIL DOCKET SHEET
H-86-3251

PLAINTIFF	DEFENDANT
CARVEL DILLARD	SECURITY PACIFIC BROKERS, INC. & FINANCIAL CLEARING & SERVICES CORP.

DATE	NR.	PROCEEDINGS
8-20-86	1	ORIGINAL COMPLAINT, with JURY DEMAND, FILED.
8-20-86	2	(RNS) ORDER, filed. Pltf to serve this order and attachment on defts. Parties may submit revised DCO within 90 days.
8-20-86	3	(RNS) DOCKET CONTROL ORDER, filed. Amendments & New Parties July 24, 1987 Motions July 24, 1987 Joint PTO Sept 1, 1987 Docket Call Sept 8, 1987, 11:00 am
8-20-86		SUMMONS (2) issued w/cc of service order and DCO.
9-18-86	4	Defts' ORIGINAL ANSWER. filed. fs dkt'd 9-24-86
12-3-86	5	Pltf's NOTICE OF ORAL DEPOSITION of Jeff D. Albaugh on Dec 11, 1986 at 9:30 a.m., filed. blh Dkt'd 12-3-86
12-10-86		Rec'd William M. Parrish (Defts' attorney) address correction. blh
12-10-86	6	Defts' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT THEREOF, filed. blh (Opposed) M/D Jan 5, 1987 by Clerk Dkt'd 12-17-86

12-10-86	7	Copy of AGREED MOTION TO CONSOLIDATE (C.A. H-84-1079), filed. blh Dkt'd 12-17-86
12-18-86	8	(COB) ORDER, filed. Parties ntfd. blh 1. Motion to Consolidate with C.A. H-84-1079 DENIED. Dkt'd 12-23-86
12-22-86	9	Pltf's MOTION FOR PRODUCTION OF NAMES OF PERSONS WITH RELEVANT KNOWLEDGE, filed. blh M/D Dec 29, 1986 by Counsel M/D Jan 12, 1987 by Clerk Dkt'd 12-23-86
12-29-86	10	Pltf DILLARD'S MEMORANDUM IN OPPOSITION TO DEFTS' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT THEREOF, filed with attachments. blh Dkt'd 1-7-87
1-6-87	11	Defts SECURITY PACIFIC and FINANCIAL'S MOTION FOR SUMMARY JUDGMENT, filed with Exhibits. blh M/D Jan 26, 1987 by Clerk Dkt'd 1-7-87
1-6-87	12	Defts SECURITY PACIFIC and FINANCIAL'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, filed. blh Dkt'd 1-7-87
1-6-87	13	Defts SECURITY PACIFIC and FINANCIAL'S MOTION FOR PROTECTIVE ORDER, filed with Exhibits. blh (Opposed) M/D Jan 26, 1987 by Clerk Dkt'd 1-7-87

1-6-87	14	Defts SECURITY PACIFIC and FINANCIAL'S BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER, filed. blh Dkt'd 1-7-87
1-7-87	15	Defts SECURITY PACIFIC and FINANCIAL'S EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO CONSIDER MOTION FOR PROTECTIVE ORDER, filed. blh (Opposed) M/D Feb 2, 1987 by Clerk Dkt'd 1-7-87
1-8-87	16	(RNS) ORDER, filed- Parties ntfd. blh 1. Defts Security Pacific and Financial Clearing's Motion for Protective Order GRANTED. 2. All discovery pertaining to present dispute STAYED until Pltf has responded to and Court ruled upon Defts' claims of res judicata and collateral estoppel. Dkt'd 1-8-87
1-29-87	17	Pltf's BRIEF IN OPPOSITION to Motion for Summary Judgment. filed. fs dkt'd 2-10-87
4-14-87	18	Defts' REPLY TO PLTF'S BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, filed with Exhibits. blh Dkt'd 5-6-87

4-16-87	19	(RNS) MOTION CONFERENCE MINUTES, filed. blh Appearances: Dillard, pro se; Parrish for Defts; Rptr: Fred Warner 1. Deft motion for summary judgment GRANTED - on grounds that the current claims could have and should have been brought in prior action in Judge Bue's Court. 2. Pltf has agreed that the Court claims are absolutely barred by limitations ($12(1) and $12(2) claims). Dkt'd 5-6-87
5-7-87	20	Pltf's MOTION FOR LEAVE OF THE COURT TO SERVE THIS SUPPLEMENTAL PLEADING, filed. blh (Opposed) M/D May 18, 1987 by Pltf pro se Dkt'd 5-12-87
5-7-87	21	Pltf's MOTION TO STRIKE FROM THE RECORD OF THE INSTANT CAUSE ALL QUOTATIONS FROM AND EXAMPLES OR EXHIBITS OF CARVEL DILLARD'S PLEADINGS IN THE CAUSE NUMBER H-84-1079, filed with attachment. blh (Opposed) M/D May 18, 1987 by Pltf pro se Dkt'd 5-12-87
5-18-87	22	Defts' RESPONSE TO PLTF'S MOTION TO STRIKE QUOTATIONS, EXAMPLES AND EXHIBITS, filed. blh Dkt'd 5-21-87
5-20-87	23	(RNS) ORDER, filed. Parties ntfd. blh 1. Defts' Motion to Dismiss GRANTED. Dkt'd 5-21-87

5-20-87	24	(RNS) FINAL JUDGMENT, filed. Parties ntfd. blh 1. Case DISMISSED. 2. This is a FINAL JUDGMENT. Dkt'd 5-21-87
6-18-87	25	Pltf. NOTICE OF APPEAL to Final Judgment entered May 20, 1987, filed. mac
6-18-87		Filing & Docketing Fees both paid. (Rcpt.#3144389 $105.00) mac
6-18-87	26	Court Reporter's TRANSCRIPT OF HEARING on Apr 16, 1987, filed. Rec. and Dkt'd 6-19-87 mac
6-19-87	27	Pltf. TRANSCRIPT ORDER FORM advising that the transcript was complete on Jun 19, 1987, filed. mac
6-22-87		RECORD ON APPEAL consisting of All Original Papers (1 Vol) and Transcript (1 Vol.) forward to Court of Appeals. mac
4-13-88	28	Certified Copy of JUDGEMENT by court of Appeals on Jan 15, 1988 issued, as MANDATE on Apr 11, 1988, VACATING & REMANDING to District Court for further proceedings, IT IS FURTHER ORDERED that each party bears its own costs on appeal, filed. bw dkt'd 4-26-88
4-13-88	29	Certified Copy of OPINION by Court of Appeals, filed. bw dkt'd 4-26-88

4-13-88		Record on Appeal RETURNED by Court of Appeals, reassembled and given to June C. bw
4-13-88		CASE REOPENED to Judge DeAnda by random draw, per JEC memo of 4/26/88. bw
1-6-88	30	Deft's NOTICE OF Incorporation and Change of name, filed. db (Jenkins & Gilchrist) Dkt'd 4-27-88
6-21-88	31	(JDA) ORDER setting conference on all pending matters, filed. Parties ntfd. pg Dkt'd 6-23-88 Motions 7-18-88 Responses 8-15-88 Conference set 8-31-88 at 4:00 p.m.
8-4-88	33	(JDA) ORDER, filed. Parties ntfd. db Conference for setting on Aug 31, 1988 is vacated. Dkt'd 8-5-88
8-2-88	34	(JDA) ORDER, filed. Parties ntfd. db Supplemental complaint is stricken from record because Pltf failed to request leave of court to file it.
8-2-88	35	(JDA) ORDER, filed. Parties ntfd. db Case is transferred back to docket of Sterling.
9-1-88		Case Transferred to Docket of Judge Sim Lake. Dkt'd 8-8-88
8-22-88		Recd copy of Petition to the Chief Judge, fwd to crd. fs 8-29-88

5-30-89	36	Pltf's NOTICE OF CONSOLIDATED APPEAL, filed. bw dkt'd 6-2-89
5-30-89		Filing & Docketing Fees BOTH Paid. (Rec't #327485) bw
6-15-89	37	Pltf's DESIGNATION OF RECORD OF CONSOLIDATED APPEAL, filed. bw (Entire File)
7-14-89	38	Pltfs TRANSCRIPT ORDER FORM advising that the transcript is already on file in the Clerk's Office, filed. bw dkt'd 7-14-89
7/28/89	39	(SL) ORDER entered, parties notfd. jd Court will conduct a telephone conference call on Sept. 15, 1989 at 2:00 p.m. to determine status of this case. Court's Secretary will call Pltf. and Wm. Parrish, counsel for Deft. at scheduled time. By Sept. 8, 1989 each party is to submit a memorandum setting out the causes of action and defenses remaining for trial, any additional discovery that is necessary and the date by which a joint pretrial order can be filed. eod 7/28/89 jd
9-8-89	40	Defts' MEMORANDUM IN RESPONSE TO ORDER of 7-27-89, filed. dj eod 9-13-89

BEST AVAILAB

9-11-89	41	Pltf's MOTION TO ADD CLAIMS TO COMPLAINT; MOTION TO RESERVE THE PLEADING OF INCREASED DAMAGES UNTIL TRIAL; MOTION TO ADD JENKINS & GILCHRIST & SECURITY PACIFIC CORP. AS DEFTS; MEMORANDUM OF CAUSES OF ACTION REMAINING FOR TRIAL; and AFFIDAVIT IN SUPPORT of the Motions, filed. dj eod 9-13-89
9-15-89	42	Pltf's MOTION FOR SUMMARY JUDGMENT AND PROPOSED ORDER THEREOF, filed. M/D 10-05-89 by clerk. eod 9-19-89
9-19-89	43	(SL) HEARING MINUTES AND ORDER, entered. Parties notified. Hearing held 9-15-89. Reporter: Shaeffer. Appr: Carvel Dillard for Pltf. W. Parrish for Deft. Pltf has 30 days to file amended complaint. No depo's can be taken w/o 10 days notice. Pltf's mtn for summary judgment is DENIED as frivolous. (Summary judgment received in Chambers on 9-15-89)
9-19-89	44	(SL) DOCKET CONTROL ORDER, entered. Parties notified. New parties — Jan 01. 1990 Discovery — Sep 30, 1990 Motions — Oct 07, 1990 Joint PTO — Jan 04, 1991 Docket Call — Jan 11, 1991 @ 4:00 PM cj
10-25-89	45	Pltf's MOTION for Stay Until there is a Decision of the Appeals Court in a Related Action, filed. bj eod 10-25-89 M/D 11-14-89 by clerk

LE COPY

10/27/89	46	(SL) ORDER entered, parties notfd. A new scheduling order showing time for filing amended Complaint, will be issued subsequent to the issuance of the appeals court's ruling. The present docket control order will continue to apply to the present parties. eod 10/27/89 jd
3/12/90		Notice of change of address for Deft. atty. eod 3/21/90 jd
7/20/90	47	Defts' RULE 41(b) MOTION to dismiss, filed. ymm M/D 8/9/90 eod 7/31/90
8-13-90	48	Pltfs' MOTION to Extend Time for Filing Opposition to Motion to Dismiss MOTION to Consolidate H-88-2848 and H-86-3251 MOTION for Stay, filed. bj M/D 9-4-90 by clerk eod 8-16-90
8/13/90		Dillard's LETTER in re: change of address. rec'd. ymm
8/30/90	49	Defts' RESPONSE to Pltfs Motion to Consolidate, filed. eod 9/6/90 pv
8/30/90	50	Defts' RESPONSE to Pltfs Motion to Stay, filed. eod 9/6/90 pv
8/30/90	51	Defts' RESPONSE to Pltfs Motion to Extend Time for Filing and Reply to Pltfs Opposition to Motion to Dismiss, filed. eod 9/6/90 pv

9/10/90	52	(SL) ORDER, entered, Parties ntfd. br Pltf. shall file an amended compl by Oct. 5, 1990 or this action will be dismissed. Pltf's Mtns f/stay & to consolidate this action w/H-86-3251 are DENIED. EOD 9/13/90 br
10/5/90	53	Pltf's MTN FOR LEAVE TO AMEND COMPLAINT, filed. M/D 10/25/90 by clerk. (Orig. to Amended Complaint to CRD) eod 10/9/90 kds
10-5-90	54	Pltf's First Amended Complaint, filed. bj eod 10-18-90
10/29/90	55	Defts' RULE 12 MOTION REGARDING PLTFS FIRST AMENDED COMPLAINT, filed. M/D 11/18/90 eod 11/15/90 pv
11/19/90	56	Pltf's OPPOSITION to Defts rule 12 Motions Regarding Pltfs First Amended Complaint and Pltfs Second Motion for Stay and Consolidation, filed. eod 11/28/90 pv
11-28-90	57	Defts' RESPONSE to Pltf's Second Motion for Stay and Consolidation, filed. eod 12-11-90
11-28-90	58	Defts' REPLY to Dillard's Response to Rule 12 Motions, filed. eod 12-11-90
12/21/90	59	DILLARD'S REPLY TO DEFT'S REPLY TO DILLARD'S RESPONSE TO RULE 12 MOTIONS, filed. fas eod 12/31/90

12/26/90 60 MEMORANDA CONCERNING ERROR IN EXHIBIT TO DILLARD'S REPLY TO DEFT'S REPLY TO DILLARD'S RESPONSE TO RULE 12 MOTIONS, filed.
eod 12/31/90

12/31/90 61 (SL) MEMORANDUM AND ORDER, entered. Parties ntfd. fas
1. Defts' Motion to Dismiss Dillard's claim asserting a cause of action under 18 U.S.C. 1951 is GRANTED, and this claim is DISMISSED.
2. Defts' Motion to Dismiss Dillard's RICO claim is GRANTED, and this claim is DISMISSED without prejudice.
3. Defts' Motion to Dismiss Dillard's claims against defts' "for damages to pltf due to... Title 42 violation of civil rights" is GRANTED, and these claims are DISMISSED without prejudice.
4. Defts' Motion to Strike is GRANTED as to paragraph 8-18, 21-23, 29, 40-45, 88-90, 94-108, 111, and 114-125 of Dillard's First Amended Complaint, and DENIED as to paragraphs 1, 2-5, 49-68, and 91-93.
5. Defts' Motion for a More Definite Statement is DENIED.
6. Pltf's Second Motion for Stay and Consolidation (#56) is DENIED.

eod 12/31/90

12/31/90	62	(SL) FINAL JUDGMENT, entered. Parties ntfd. fas This action is DISMISSED. This is a FINAL JUDGMENT. eod 12/31/90
1-30-91	63	Pltf's NOTICE OF APPEAL from the Final Judgment entered on 12-31-90, filed. (no fees accepted) eod 2-11-91 km
2-11-91		Mailed notice of filing appeal to all parties and CCA. km
2-28-91	64	Pltf's TRANSCRIPT ORDER FORM requesting transcription of proceedings held 9-15-89 (telephone conference) (Crtrptr J. Schaefer) filed. km
3-1-91	65	Crtrptr J. Schaefer TRANSCRIPT of proceedings held 9-15-89, filed. km (1 volume)
3-6-91	66	Copy of letter from CCA to Mr. Dillard-appellant requesting payment of fees for appeal 91-2135, filed. eod 3-11-91 km
3-11-91		Filing and docketing fees both paid. (Rcpt 400081) km

Date of Entry: October 5, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL DILLARD Plaintiff	
	No. H-86-3251
v.	
SECURITY PACIFIC BROKERS, INC. AND FINANCIAL CLEARING & SERVICES CORPORATION Defendants	

FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, CARVEL G. DILLARD files this his first amended complaint against: SECURITY PACIFIC BROKERS, INC. AND FINANCIAL CLEARING AND SERVICES CORPORATION defendants herein and asks for trial by jury. The defendants have been served by U.S. Certified Mail, Return Receipt Requested, to their attorney each with copy of this Complaint.

JURISDICTION AND VENUE

This court has federal question jurisdiction under the provisions of 28

U.S.C. 1331 because of the allegations of violations of Federal Law. Additionally, this court has subject matter jurisdiction pursuant to 28 U.S.C. #1332(A)(1) because it is a civil action between citizens of different states where the amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

Venue is proper in this district pursuant to 28 U.S.C. #1391(A) because the claim arose here.

DESCRIPTION OF THE PARTIES

1. "My name is Carvel Gordon Dillard. I am the plaintiff herein. I am 44 years old and have never been convicted of a felony.

2. I have never been convicted of any law violation other than minor traffic violation.

3. I have never had a judgement taken against me in any court of law except one default judgement in H-84-1079.

4. That action is the only time I have ever been sued.

5. There is no pending civil suit against me nor any pending charge that I have violated the law.

6. I was an investor and arbitrager and in that capacity had securities brokerage dealings with Security Pacific Corp., through its subsidiaries Security Pacific Brokers, Inc. and Financial Clearing and Services Corporation.

7. The subsidiaries are defendants herein and the parent corporation should be defendant.

8. Security Pacific Corp. is a corporation organized under the laws of a state other than Texas which does business in Houston, Harris County, Texas, as well as other locations through its subsidiaries.

9. Security Pacific Corp.'s principal place of business is California.

10. Security Pacific Corp. is California's second largest bank holding

company and it is engaged in the business of providing, among other things, banking, brokerage and financial services.

11. Security Pacific Corp., Security Pacific Brokers, Inc., and Financial Clearing and Services Corporation are herein referred to as "S. Pacific".

12. Jenkens & Gilchrist is a Texas corporation and it should be a defendant both as a partnership and as a professional corporation because it is culpable for damages done while a partnership and for subsequent damages after time of incorporation.

13. Jenkens & Gilchrist is a law firm and is herein complained of for knowingly participating in criminal conspiracy and knowing and deliberate commission of several felony crimes in conjunction with their representation of S. Pacific.

14. They are co-conspirators; S. Pacific, and Jenkens & Gilchrist are each guilty of the crimes of the other.

15. Merrill Lynch, Pierce, Fenner and Smith, Inc., herein "Merrill Lynch", is directly connected to the malicious prosecution in part through Jeff Roys, the employee of S. Pacific who deliberately made an untrue complaint, under Jenkens & Gilchrist supervision, to elicit criminal prosecution of Mr. Dillard, in reward for which Steven McAnally, employee of Merrill Lynch, who looted Mr. Dillard's account at Merrill Lynch awarded him a job at Merrill Lynch.

16. Merrill Lynch falsely told the District Attorney investigator that Mr. Dillard never had any money in his Merrill Lynch account.

17. They are co-conspirators and Merrill Lynch, S. Pacific, and Jenkens & Gilchrist are each guilty of the crimes of the other.

18. Various other persons, firms and corporations not yet made defendants herein have participated as co-conspirators with the defendants in some of the offenses

hereinafter charged and have performed acts and made statements in furtherance thereof. Said co-conspirators include, but are not limited to: Merrill Lynch, Pierce, Fenner and Smith Inc., Jenkens & Gilchrist (A Partnership), Jenkens & Gilchrist (A Professional Corporation), and Security Pacific Corp.

19. The illegal acts of the defendants were authorized, ordered, and accomplished by corporate officers, agents, employees or representatives while they were actively engaged in management, control, or direction of business activity.

20. Service of process in this litigation can be accomplished as follows:

CARVEL G. DILLARD, Plaintiff, Pro Se:

903 SW Central
Grants Pass, Oregon 97526
(503) 479-0098

SECURITY PACIFIC BROKERS and FINANCIAL CLEARING AND SERVICES CORPORATION, Defendants, through their attorney:

Steve Stewart
Jenkens & Gilchrist
1200 Citicorp Center
1200 Smith Street
Houston, Texas 77002

21. Attached as Exhibit "A" to affidavit of Carvel G. Dillard filed herein in September 1989 is notice of complaint from District Attorney demanding that $86,661.25 be paid to S. Pacific.

22. Attached to affidavit as Exhibit C was pages 1 through 6 of a statement of account for Account No. 48100090, which is my account at S. Pacific.

23. The statement of account shows that: there was no deposit prior to trading.

24. I was trading upon credit extended by S. Pacific. Payment for a subsequent loss was refused by me because it was not my loss.

25. The record of Account No. 48100090 shows trading occurring on February 17, 1984, and no deposit to account until February 21, 1984. Therefore, by S. Pacific's own record, the trading was for a

period of at least three days indisputably on credit.

27. Payables owed me by broker Merrill Lynch were deposited payable to me in my S. Pacific account while the trading continued on credit.

28. S. Pacific had no legal recourse against me for theft should as happened Merrill Lynch fail to pay as I ordered.

29. Merrill Lynch had just previously confirmed my excellent credit to S. Pacific Manager, Jeff Roys, by telephone prior to my opening account at S. Pacific.

30. S. Pacific improperly attempted to charge me with a trading loss caused by their own gross negligence.

31. I refused to pay it.

32. S. Pacific claimed $56,256.00.

33. This amount was subject of lawsuit H-84-1079, but no fact of that dispute has ever been adjudicated on merit since that litigation has been decided upon default and therefore there is no res judicata or

estopple effect from H-84-1079 whatsoever.

34. S. Pacific overreached by claiming theft of $86,661.25.

35. S. Pacific used the knowingly fraudulent allegation of theft of $86,661.25 to have the State of Texas harass and oppress me by threat of jail unless I pay S. Pacific all of $86,661.25.

36. Under color of official right S. Pacific pressed their unjust claim to $86,661.25 causing me grievous injury and defamation.

37. In violation of our contract, which specified that unpaid demands for payment from other of my debtors would be returned to me, S. Pacific retained the unpaid demands upon Merrill Lynch and falsely told the District Attorney that I had endorsed them payable to S. Pacific.

38. The District Attorney, in violation of the rule that demands examination of the draft itself to determine payee, took action against me on the bare allegation of S. Pacific manager,

Jeff Roys, as he was directed by William Parish of the law firm of Jenkens & Gilchrist.

39. That Jeff Roys made complaint for theft of $86,661.25 is in District Attorney's records that I examined; that William Parrish directed Jeff Roys in this extortion and arranged the threat of arrest I cannot doubt because in telephone conversation with Mr. Parrish he admitted those facts to me.

40. Far from admitting the error of this $86,661.25 claim, Mr. Parrish claimed in written pleadings to the 5th Circuit that this bogus claim had been adjudicated in S. Pacific's favor in H-84-1079.

41. I was unable to show the appeals court the statement of account of Account No. 48100090 because I did not have it.

42. You will note that the statement is addressed to #1C and #1C is not and never has been my address.

43. S. Pacific apparently sent the

copy to the wrong address.

44. I obtained copy of the statement for the first time in April 1989.

45. The default in H-84-1079 occurred because I did not receive my mail.

46. S. Pacific must perfect their claim to the $86,661.25 or be adjudged guilty of multiple crimes and incur civil liability for my injury as a result of their theft claim.

47. Neither the drafts nor the statement of account supports this outrageous $86,661.25 claim.

48. S. Pacific and Jenkens & Gilchrist did harass and oppress me under color of Texas state law maliciously and fraudulently using official right to oppress me and to deny me rights guaranteed under the Constitution and laws of the United States and did attempt to extort my money owed to me by Merrill Lynch by threat of arrest unless I pay it all to them.

49. I refused to pay this extortion demand.

50. I was indicted for theft without opportunity to talk to Grand Jury.

51. The District Attorney's records show that the District Attorney was deceived by letter from Bonnie Dailey, in house counsel for S. Pacific in which she claimed that I had previously attempted theft of $31,806.79 as evidence of my intent to steal.

52. S. Pacific had mailed me a S31,806.79 check from them payable to me.

53. I immediately took the $31,806.79 check back to S. Pacific and gave it to Jeff Roys and inquired as to why it had been sent to me.

54. I had previously told Mr. Roys that I did not want to withdraw any amount in excess of profit.

55. Mr. Roys told me that it had been sent by mistake and that it should have been credited to my account as the result of a trade but that mistake was made by S. Pacific and that the unsolicited check was sent to me because of a pay notation

written upon the trade confirmation slip by their New York trader.

56. I instructed that the $31,806.79 was to be deposited back to my account No. 48100090.

57. I did not cash the check nor did I attempt to cash it.

58. I left the check with Mr. Roys.

59. The written information given to the District Attorney by Bonnie Dailey was that I had stolen the check and only S. Pacific's stop payment prevented theft.

60. The information was false and was intended to convey the impression that I had attempted to steal $31,806.79.

61. Subsequently S. Pacific sent me a check for $8,000.00 and I accepted and cashed the check without discussion because the account had excess profit in the amount of over $8,000.00.

62. After a dispute with S. Pacific over failure to cover my short position, Mr. Roys claimed the $8,000.00 was S.

Pacific's and alleged to the District Attorney that I took it without permission indeed that I stole that particular $8,000.00 from S. Pacific.

63. I was indicted without opportunity to submit any evidence favorable to my interest to the Grand Jury.

64. That $8,000.00 was and is mine.

65. A specially prepared dummied-up statement of account showing trades made without showing debits and credits was submitted by S. Pacific to the District Attorney to support their claim for the $8,000.00 and for the $86,661.25, both sums are my money.

66. The dummied-up statement of account was also in the District Attorney's record which I examined.

67. After long prosecution and much difficulty I was able to submit proof to the District Attorney which showed the $8,000.00 to be a check from S. Pacific to me and also showed it to be an aggregate amount of profit as a result of multiple

trades within Account No. 48100090.

68. The District Attorney made motion to dismiss because the representations of S. Pacific did not match the facts and there was no probable cause to support a theft indictment for that $8,000.00 nor for any part of the $86,661.25.

69. A second indictment for theft of the $86,661.25 or part thereof had been quashed upon production of the checks which did not show S. Pacific to be payee nor were the checks shown to be endorsed payable to S. Pacific and therefore they cannot be regarded as a promise to pay S. Pacific anything.

70. S. Pacific has made an illegal use of criminal prosecution for ulterior motive.

71. S. Pacific has malice against me because of the short position dispute with them and because of conspiracy with Merrill Lynch which has it's own ax to grind because of civil litigation I have pressed against them:

72. S. Pacific tried to extort $86,661.25.

73. S. Pacific used the threat of $86,661.25 theft prosecution, all the while knowing that S. Pacific's $86,661.25 claim was bogus in order to attempt easy collection of lesser amount: $56,256.00.

74. S. Pacific used the threat of criminal prosecution in attempt to collect $56,256.00 default judgement.

75. Outside the courtroom after the April 16, 1987 hearing before this court. Mr. Parrish told plaintiff that S. Pacific would have the criminal charges against plaintiff dropped, if it could, if plaintiff would pay them.

76. Alan Ray Dillard was standing next to plaintiff when Mr. Parrish conferred with plaintiff outside the courtroom and he overheard the entire conversation between Mr. Parrish and plaintiff.

77. Plaintiff submits to the court that this action by Mr. Parrish makes clear that the criminal prosecution was

instigated to obtain advantage in collection of a debt and that the criminal prosecution constituted an abuse of process.

78. Through the malicious instigation of defendants, criminal charges were brought against plaintiff and those charges were then used maliciously, perversely, and unlawfully as a club in an attempt to force plaintiff to pay an alleged credit debt to defendant.

79. S. Pacific: Used three no probable cause criminal prosecutions to try to collect a $56,256.00 default judgement.

80. Used malicious criminal prosecution as a club in attempt to settle civil litigation.

81. Offered to drop criminal prosecution and renounce all claims against me, including the $56,256.00 default judgement claim if only I will drop civil litigation, but only after all else was this offer made.

It is clear that:

82. I was criminally prosecuted because of the deliberate actions, aid, and cooperation of S. Pacific.

83. The criminal prosecutions have been quashed and dismissed and further criminal prosecution is impossible.

84. I am innocent of each and every criminal charge, indeed I did not do anything legally, morally or ethically. wrong.

85. S. Pacific knew all along that there was no probable cause to support any of the several bogus criminal charges that they demanded that the district attorney prosecute.

86. The indictments were the direct result of malice by S. Pacific, malice which originated because of dispute over their gross negligence in a short sale.

87. The damage done to me by the malicious prosecution is great. I was arrested. I had expense of bond, defense, travel, etc. My reputation has been damaged

and I have been injured in my business, the damage to me is certain and obvious and not all recounted here. The court should note that S. Pacific has specifically denied:

88. That any trading in Account No. 48100090 was ever done on credit; yet credit trading is shown on account statement page 1 where it is shown that trading started several days prior to any deposit to account.

89. That any short sale of SP 100 index March 160 puts ever took place; yet short sale is shown on account statement pages 5 and 6 where 200 SP 100 March 160 puts are shown sold short in account No. 48100090 for a credit to account of over $178,000.00.

90. S. Pacific under the direction of William Parrish, lied to the 5th Circuit and lied in answers to complaint in H-86-3251 and in H-88-2848 and until my receipt of the account statement it was my word against theirs.

91. William Parrish's attitude was that not getting caught in a lie was the same as telling the truth and he thought that the multiple false statements he made in behalf of S. Pacific would be buried in pleadings - never to be checked because he apparently thought that if all else failed and he could not grind me down with repetitive criminal charges nor have my civil complaint dismissed on technicality - he believed that he could buy peace at any time by simply dropping the criminal charges in return for my dropping civil litigation. Largely at his direction S. Pacific perpetrated a great deceit:

92. By providing a specially prepared dummy statement of account for the District Attorney which deliberately deleted critical data.

93. By providing several courts with a statement of account with disputed items smeared and illegible or just missing because the copier was deliberately misaligned so that disputed items were cut

off the page.

94. By resisting any discovery.

95. S. Pacific denied that they had failed to buy to cover a short position, indeed they denied that there even was a short position.

96. This was a rough position for them to maintain because several people have direct personal knowledge of these facts.

97. One such person is Jeff Albaugh who was a broker for S. Pacific.

98. Mr. Albaugh had disappeared.

99. Private detectives in my employ found him in Burbank, California.

100. My investigation indicated that both Jeff Roys, Manager for S. Pacific, and Jeff Albaugh had both told Mr. Parrish the truth: That S. Pacific had negligently failed to cover the short position - but that Mr. Parrish told them it did not matter and denied it in behalf of S. Pacific to the court.

101. I asked Mr. Albaugh for a

statement concerning the failure to cover the short sale that S. Pacific had repeatedly claimed was non-existent.

102. He asked for time to contact S. Pacific.

103. Mr. Art Fritz of S. Pacific advised Mr. Albaugh to hide from me.

104. I overheard part of a telephone conversation between Mr. Fritz and Mr. Albaugh. Mr. Albaugh told Mr. Fritz that hiding had done no good and as Mr. Albaugh had predicted to Mr. Fritz, Mr. Albaugh had been served with subpoena.

105. Hearing was held in Federal Court for the Central District of California with Judge Penne presiding. After a hot debate between me and S. Pacific's west coast lawyers, Judge Penne declared that under the law I had the right to depose Mr. Albaugh and that Mr. Albaugh would be deposed 30 days hence.

106. S. Pacific did nothing for the 30 days except to send me a letter confirming date of deposition. When I was in

California for the deposition on the afternoon of the day before a scheduled 9:00 a.m. deposition, S. Pacific petitioned Judge Sterling in Houston, ex parte, and got a protective order.

107. When ordered by the 184th District Court of Texas to provide me a pre-trial discovery and inspection S. Pacific provided no discovery. It simply ignored the order. The judge blustered about finding them in contempt and spoke of fine and/or arrest but repeatedly delayed to take any such action - leaving the District Attorney in an impossible position as far as proceeding with the prosecution.

108. The District Attorney then began a concerted effort with S. Pacific to force me into dropping this civil litigation, H-86-3251, which constituted gross prosecutorial abuse.

109. I refused many times to drop my civil action in return for S. Pacific and the District Attorney stopping prosecution.

110. Each time I refused I was threatened with continued prosecution - and indeed the prosecution continued.

111. I was docketed in the 184th District Court about every three weeks for all of some years. I had a court mandated appearance in the 184th District Court about two dozen times. I spent so much time appearing for hearings that rotation caused the case to be through several young District Attorneys who found they could not abandon prosecution nor keep their promise to let me defend myself before a grand jury by order of Carl Hobbs, District Attorney Chief in the 184th District Court.

112. The record of the prosecution in the 184th District Court is one of abuse of process.

113. The false swearing of Jeff Roys of S. Pacific at the direction of William Parrish of Jenkens & Gilchrist and the false and deceptive declarations of Bonnie Dailey, on behalf of S. Pacific created a web of deceit that first confused and then

embarrassed some Assistant District Attorneys.

114. S. Pacific has denied the $178,000.00 short sale.

115. Discovery of the account record clearly shows the deliberate deception -- no error but deliberate deception of S. Pacific in repeated denial to several courts that the $178,000.00 transaction ever took place.

116. I was pilloried on the basis of unfounded charges.

117. S. Pacific still claims I owe them $86,661.25 or at least they have not recanted yet.

118. The statement of account does not show that I owe S. Pacific $86,661.25.

119. Indeed, it does not indicate that I owe S. Pacific anything.

120. A $178,000.00 short sale S. Pacific claims never happened shows up.

121. The $31,806.79 check I never cashed is shown as debit.

122. The reality is that without any discovery it was my word against S. Pacific's who swore I stole: $86,661.25 and $8,000.00 and $56,256.00 and who swore that my complaint about failure to short cover as ordered was a bold-faced lie because no short sale took place and have again and again managed to cover their perfidy and extortionary demands by no discovery.

123. In equity I do not owe S. Pacific the $56.256.00 default judgement because of valid counterclaim but there was no discovery in H-84-1079 either.

124. I want an accounting and discovery to press my demand for compensation for the damage caused me by crimes committed against me by S. Pacific, it's agents, and co-conspirators.

125. During the time period involved herein certain of the defendant corporations or their co-conspirators sold for fees and commissions millions of dollars worth of stocks, bonds, options, and financial services out of and for my

brokerage accounts in Houston, Texas.

126. The conspiracies and other crimes alleged herein had a substantial effect on said commerce. Attempt to hide their monetary crime caused defendants and their co-conspirators to initiate an escalating series of crimes against the civil rights and against the person of plaintiff.

VIOLATIONS ALLEGED:

(All paragraphs of this complaint are incorporated by reference)

127. Violation of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. Section 1961. Defendants and their agents did commit multiple felonies in violation of this Federal Law including: Conspiracy. Conspiracy to extort under color of official right in violation of 18 U.S.C.A. Section 1951, conspiracy to defraud, conspiracy to deprive plaintiff of his liberty, conspiracy to extort, conspiracy to obstruct interstate commerce by extortion, 18 U.S.C.A., Section 1951, Note

11: "This section prescribes not only obstructing or attempting to do so; in short a violation is complete when one attempts to induce a person to part with property." False Swearing. In August 1984 defendants made a complaint charging theft by plaintiff of $86,661.25 Extortion.

128. The false criminal charge was one of a number of outrageous actions done by defendants to harass and oppress in order to compel payment of or in retaliation for plaintiff's refusal to meet defendants' extortion demands. Please see U.S.C.A. 18 Section 1951, Note 13: "Congress... meant to punish as extortion any effort to obtain property by inherently wrongful means, such as ... threats of ... criminal prosecution, regardless of the defendants claim or right to the property.

129. Plaintiff additionally makes claim against defendants for damages to plaintiff due to defamation, abuse of process, malicious prosecution and Title 42

violation of civil rights.

DAMAGES

130. It will be made apparent to the court that this is a racketeering enterprise injury in violation of Federal and State Law statutes which specifically prohibit such activity. Injury by reason of a violation of U.S.C.A. 18 Section 1962 has provision for and plaintiff therefore demands costs of suit, attorneys fee and mandatory award of threefold the damages.

131. The multiple felonies, and reckless disregard for plaintiff's rights committed by defendants and their agents warrant the awarding of punitive and exemplary damages. The character of defendants' acts and the nature and extent of the harm to plaintiff, are just reason for the awarding of substantial punitive and exemplary damages.

PRAYER

132. Plaintiff requests that the court entitle him to obtain from defendant for

mental injury, harm to reputation, harm to profession and for other injuries and costs, a judgement of at least twenty-five million dollars all trebled for a total judgement of seventy-five million dollars.

133. And plaintiff prays for all other and further relief, general or special, at law or in equity, to which plaintiff may be justly entitled, and for all other and further proper relief.

Respectfully submitted,

CARVEL G. DILLARD, Plaintiff
903 SW Central
Grants Pass, Oregon 97526
(503) 479-0098

Date of Entry: January 8, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL DILLARD	$	
	$	
V.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC BROKERS,	$	
INC., and FINANCIAL	$	
CLEARING & SERVICES	$	
CORPORATION	$	

ORDER

Pending before the Court is Defendant Security Pacific Brokers, Inc. and Financial Clearing and Services Corporation's motion for the entry of a Rule 26(c), Fed.R.Civ.P., protective order barring the noticed deposition of Jeff D. Albaugh. In light of allegations contained in this motion, and an accompanying motion for summary judgment, that the claims presently asserted by Plaintiff, Carvel Dillard, have already been fully litigated, it is, therefore,

ORDERED, ADJUDGED and DECREED that the Defendants' motion is GRANTED. It is

further ORDERED that all discovery pertaining to the present dispute be stayed until the Plaintiff has responded to and the Court has ruled upon the Defendants' claims of res judicata and collateral estoppel.

DONE at Houston, Texas, this 5th day of January 1987.

ROSS N. STERLING
United States District Judge

Date of Entry: May 20, 1987

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL DILLARD	$	
	$	
V.	$	CIVIL ACTION
	$	No. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC .	$	
AND FINANCIAL	$	
CLEARING AND	$	
SERVICES	$	
CORPORATION	$	

O R D E R

On April 16, 1987, this Court held a hearing on Defendants, Security Pacific Brokers, Inc. and Financial Clearing and Services Corporation's Motion for Summary Judgment. This motion was granted from the Bench, and the Court did so for the following reasons.

The current claims asserted by Plaintiff, Carvel Dillard, are the product of a February 14, 1984 agreement with the Defendants to trade in options. Pursuant to this agreement, Mr. Dillard was to direct the purchase of various put and call

options in his account. Mr. Dillard complains that on February 27, 1984, he directed his brokers and the Defendant's employees to buy 200 Standard and Poors March 160 index option puts for 3-3/8ths each. This order was not carried out and neither was a subsequent order for this same purchase at a price of 3-1/2. Mr. Dillard claims that this amounted to negligence and that he suffered a minimum loss of $50,000.00. He, therefore, seeks recovery under various theories including common law fraud, negligence, and the Securities Act of 1933, 15 U.S.C. $ 77(a), et seq. (1982), and the Securities Exchange Act of 1934, 15 U.S.C. $ 78(a), et seq. (1982). This same transaction was, however, the source of a prior action in this district. Mr. Dillard admittedly paid for the ordered stock transactions with three bad checks. The Defendants suffered a $56,256.00 loss as a result and they instituted a suit for the recovery of this amount and reasonable attorney's fees in

Judge Bue's Court. Mr. Dillard answered these claims. He raised the alleged negligence of the Defendants in failing to carry out his stock purchase orders as he was required to do by Rule 13(a), Fed.R.Civ.P., but he failed to comply with the Defendants' discovery request or Judge Bue's discovery orders. Judgment was, consequently, entered against him, and the Defendants argue that this judgment bars the current claims under the doctrines of res judicata and collateral estoppel.

This Circuit is quite clear as to the prerequisites for application of the doctrine of res judicata. If a prior judgment is to bar a subsequent action it must have (1) been rendered by a court of competent jurisdiction; (2) been a final judgment on the merits; (3) involved the same parties or those in privity with them; and (4) the same cause of action must have been involved in both suits. Jones v. Texas Tech University, 656 F.2d 1137, 1141

(5th Cir. 1981). Judge Bue's original judgment was no doubt delivered by a competent court, was final, involved the same parties presently before this Court, and involved the same causes of action which were asserted in Mr. Dillard's answer or which were required to have been asserted under Rule 13(a). Since Mr. Dillard has not disputed any of this in his Memorandum in Opposition to Defendants' Summary Judgment Motion or in the April 16, 1987 hearing before this Court, it is, therefore,

ORDERED, ADJUDGED and DECREED that in accordance with this Court's prior Bench ruling, the Defendants' Motion to Dismiss is GRANTED.

DONE at Houston, Texas, this 20th day of May, 1987.

ROSS N. STERLING
UNITED STATES DISTRICT JUDGE

Date of Entry: May 20, 1987

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL DILLARD	$	
	$	
V.	$	CIVIL ACTION
SECURITY PACIFIC	$	NO. H-86-3251
BROKERS, INC.	$	
AND FINANCIAL	$	
CLEARING AND SERVICES	$	
CORPORATION	$	

FINAL JUDGMENT

In accordance with the Order of the Court entered this date, it is, hereby

ORDERED, ADJUDGED and DECREED that this case is: DISMISSED.

This is a FINAL JUDGMENT.

DONE at Houston, Texas, this 20th day of May, 1987.

ROSS N. STERLING
UNITED STATES DISTRICT JUDGE

Date of Entry: January 15, 1988

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-2673
Summary Calendar

D.C. Docket No. CA-H-86-3251

CARVEL DILLARD,

Plaintiff-Appellant

versus

SECURITY PACIFIC BROKERS, INC.,
AND FINANCIAL CLEARING &
SERVICES CORPORATION,

Defendants-Appellees

Appeal from the United States District
Court for the Southern District of Texas

Before GEE, GARWOOD, and JONES, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is vacated, and the cause is

remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that each party bears its own costs on appeal.

January 15, 1988

ISSUED AS MANDATE: April 11, 1988

Date of Entry: August 2, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD	$	
PLAINTIFF	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC., ET AL	$	
DEFENDANTS.	$	

ORDER

Plaintiff Carvel G. Dillard has filed a supplemental complaint in the above referenced cause. The Court

ORDERS that the supplemental complaint is stricken from the record because Plaintiff failed to request leave of Court to file it. Furthermore, the Court admonishes Plaintiff that it has been informed by one of the proposed new Defendants that that party has not been served with a copy of this pleading, contrary to Plaintiff's assertions in his verified instrument. Even though

Plaintiff is proceeding Pro se, he will be held to required standards of truth and correct procedure in this action.

DONE this 2nd day of August, 1988 at Houston, Texas.

J. DeAnda
Chief Judge
United States District Court

Date of Entry: August 2, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD	$	
PLAINTIFF	$	
	$	
VS.	$	CIVIL ACTION
	$	NO: H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC., ET AL.	$	
DEFENDANTS.	$	

ORDER

The Court ORDERS that the above referenced cause is TRANSFERRED back to the docket of the Honorable Ross Sterling.

DONE this 2nd day of August, 1988 at Houston, Texas.

J. DeAnda
Chief Judge
United States District Court

Date of Entry: August 4, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD	$	
PLAINTIFF	$	
	$	
VS.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC., ET AL.	$	
DEFENDANTS.		

ORDER

Because this case is no longer on the undersigned judge's docket, the conference setting on August 31, 1988 is vacated.

DONE this 4th day of August, 1988 at Houston, Texas.

J. DeAnda
Chief Judge
United States District Court

Date of Entry: October 27, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD	$	
	$	
v.	$	NO. H-86-3251
	$	
SECURITY PACIFIC	$	
BROKERS, INC. AND	$	
FINANCIAL CLEARING	$	
AND SERVICES CORP.	$	

ORDER

On this date the court considered Plaintiff's Motion for Stay Until there is a Decision of the Appeals Court in a Related Action.

It is ordered that this action is hereby stayed until there is a decision of the United States Court of Appeals for the Fifth Circuit in Carvel Dillard versus Security Pacific Corp. et al No. 89-2583 USDC # CA H-88-2848.

A new scheduling order showing time for filing amended Complaint, will be issued subsequent to the issuance of the

appeals court's ruling. The present docket control order will continue to apply to the present parties.

Signed on this 26th day of October, 1989.

Sim Lake
U.S. District Judge

Date of Entry: September 13, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
v.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC., et al.,	$	
	$	
Defendants.	$	

ORDER

Pending before the Court are Defendants' Rule 41(b) Motion to Dismiss (Docket Entry No. 47) and Plaintiffs' Motion to Extend Time for Filing Opposition to Motion to Dismiss, Motion to Consolidate H-88-2848 and H-86-3251, Motion for Stay (Docket Entry No. 48).

The Court ORDERS plaintiff to file an amended complaint by October 5, 1990, or the action will be dismissed.

Plaintiff's motions for stay and to consolidate this action with C.A. H-86-3251 are DENIED.

SIGNED at Houston, Texas, this 10th day of September, 1990.

SIM LAKE
UNITED STATES DISTRICT JUDGE

Date of Entry: December 31, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
v.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC. and	$	
FINANCIAL CLEARING &	$	
SERVICES CORPORATION,	$	
	$	
Defendants.	$	

MEMORANDUM AND ORDER

On September 15, 1989, Plaintiff Carvel G. Dillard filed a Motion for Summary Judgment as to all of his causes of action. After careful consideration the Court denied Dillard's Motion on the ground that it was frivolous. (Docket Entry No. 43). The Court also ordered Dillard to file an amended complaint by October 15, 1989. Dillard did not comply within the time required. On October 27, 1989, the Court stayed the case pending the Fifth Circuit's decision in the appeal of an earlier case

brought by Dillard involving facts and circumstances common to this case. (Docket Entry No. 46). On May 22, 1990, the Fifth Circuit disposed of the appeal. On September 13, 1990, the Court required Dillard to amend his Complaint by October 5, 1990, or face dismissal. No leave was granted to add new parties. (Docket Entry No. 52).

Plaintiff's Motion To Amend

Pending before the Court are Dillard's Motion for Leave to Amend Complaint (Docket Entry No. 53) and Defendants' Rule 12 Motion Regarding Dillard's First Amended Complaint. (Docket Entry No. 55). Dillard's motion to amend is GRANTED except as to his attempt to add defendants, Merrill Lynch, Pierce, Fenner and Smith, Inc.; Jenkens & Gilchrist (a Partnership); Jenkens & Gilchrist (a Professional Corporation); and Security Pacific Corp., as to which Dillard's motion is DENIED. Those newly

added defendants are DISMISSED WITHOUT PREJUDICE.

Defendants' Rule 12 Motion

Paragraphs 22-33 of Dillard's Amended Complaint are DISMISSED on res judicata grounds. The matters alleged in these paragraphs should have been raised by Dillard as compulsory counterclaims to the 1984 suit brought by defendants against him. See Dillard v. Security Pacific Brokers, Inc., 835 F.2d 607, 608 (5th Cir. 1988) (The 1984 suit terminated all counterclaims arising out of the securities trading transactions.).

Defendants' motion to dismiss Dillard's libel and slander claims[1] on the ground that they are time-barred is GRANTED, and these claims are DISMISSED. Under Texas law the statute of limitations for libel and slander is one year. TEX. CIV. PRAC. & REM. CODE $ 16.002 (Vernon

[1] Dillard's complaint collectively refers to these claims as "defamation."

1986). Such a cause of action accrues when the plaintiff learns of, or in the exercise of reasonable diligence, should have discovered the wrong giving rise to the suit. Bowser v. McDonalds Corp., 714 F. Supp. 839, 842 (.D.Tex. 1989); Citizens Bank of Dickinson v. Shapiro, 575 S.W.2d 375, 380 (Tex. App.--Tyler 1978, writ refd n.r.e.).

Paragraph 35 of Dillard's Amended Complaint alleges that defendant "S. Pacific used the knowingly fraudulent allegation of theft of $86,661.25 to have the state of Texas harass and oppress me by threat of jail unless I pay S. Pacific all of $86,661.25." First Amended Complaint (Docket Entry No. 54). Paragraph 36 of the complaint alleges that Security Pacific's pursuit of this claim to the $86,661.25 through the district attorney's office caused the defamation of his character. Id. Dillard's pleadings reflect that two indictments were returned against him in

connection with the alleged theft. Id., paras. 50, 68 and 69. The first indictment (Texas v. Dillard, No. 431068), issued on August 19, 1985, was quashed on September 16, 1987. Supplemental Complaint, paras, 47-53, pp. 21-22 (Docket Entry No. 32).[2] Exhibit A attached to Dillard's affidavit reflects that on August 28, 1984, he received notice of the Security Pacific complaint filed with the District Attorney's Office that led to this indictment. Affidavit In Support Of Motions, (Docket Entry No. 41). The Court concludes that in August 1984, Dillard knew or should have known of the alleged defamatory allegations asserted against him by Security Pacific. Limitations therefore began to run in August 1984. Since this action based on the first indictment was

[2] Although the pleading asserting these facts was stricken by the Court's order of August 2, 1988 (Docket Entry No. 34), defendants do not dispute these assertions. See Defendants' Rule 12 Motion, p. 6 (Docket Entry 53).

not filed until October 5, 1990, when Dillard filed his First Amended Complaint (Docket Entry No. 54), it is barred by the limitation.

The second indictment (Texas v. Dillard, No. 484550) issued on September 17, 1987, and was dismissed on June 21, 1988. Supplemental Complaint, paras, 47-53, pp. 21-22 (Docket Entry No. 32). It is unclear from Dillard's pleadings and the record when he learned of defendants involvement in the second indictment. However, the Court concludes that at the very latest, Dillard knew or should have known of the defendants' alleged defamatory conduct in pursuing this prosecution by July 18, 1988, when he attempted to file his Supplemental Complaint alleging this cause of action. Since this action based on the second indictment was not filed until October 5, 1990, it is barred by limitations.

Dillard asserts that because the cause of action based on the second indictment

was timely raised in a related action, Civil Action No. H-88-2848, it is not time-barred in this action. He contends that since his 1988 action should have been consolidated with the instant action, the limitations period has not run for his defamation causes of action in either Civil Action No. H-88-2848 or this action. The Court finds Dillard's arguments unpersuasive and rejects them.[3]

Defendants' motion to dismiss Dillard's malicious prosecution claims on the ground that they are time-barred is also GRANTED, and these claims are DISMISSED. Under Texas law the statute of limitations on claims for malicious prosecution is one year. TEX. CIV. PRAC. REM. CODE $ 16.002 (Vernon 1986). Such a cause of action accrues when the prosecution is terminated. Rendin v.

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[3] Whether or not his defamation claims based on the second indictment were timely raised in Civil Action No. H-88-2848 is not before this Court, and the Court expresses no opinion on that question.

Saenger, 250 S.W.2d 465 (Tex. App.--El Paso 1952, writ refd n.r.e.); Van Koehring v. Witte, 40 S.W.2d 63 (Tex. civ. App.--1897, writ refd). Dillard's pleadings reflect that the first indictment (Texas v. Dillard, No. 431068) was quashed on September 16, 1987. The second indictment (Texas v. Dillard, No. 484550) was dismissed on June 21, 1988. Supplemental Complaint, paras, 47-53, pp. 21-22 (Docket Entry No. 32). The Court concludes that the statute of limitations for these causes of action began to run on September 16, 1987, and on June 21, 1988. Since Dillard's First Amended Complaint was filed on October 5, 1990, his causes of action for malicious prosecution are barred by limitations.

Defendants' motion to dismiss Dillard's claims for abuse of process is GRANTED, and these claims are DISMISSED. To state a cause of action for abuse of process a plaintiff must show that (1) defendants made an illegal, improper or perverted use of process, and the use was

neither warranted nor authorized by the process; (2) defendants had an ulterior motive or purpose in exercising such a legal, perverted or improper use of process; and (3) damage resulted to plaintiff as result of such irregular act. Rodriguez v. Carroll, 510 F. Supp. 547 (S.D.Tex. 1981). Mere procurement or issuance of process with a malicious intent, or without probable cause, is not actionable without some improper use of the process after its issuance. Overt acts done to obtain collateral and unlawful objectives to those appearing on the face of the instituted action may amount to abuse of process. Such acts, however, must be other than those incidental to the normal use of the courts in maintaining an action. Associated Radio Service Co. v. Page Airways, Inc., 414 F. Supp. 1088, 1096 (N.D.Tex. 1978).

Dillard has failed to allege sufficient facts to establish the elements

of a claim for abuse of process to extort the sum of $86,661.25. He has pled no facts showing any conduct by defendants outside the normal use of the courts in seeking the return of the alleged stolen funds. However, contrary to defendant's arguments Dillard has alleged sufficient facts to establish the elements of a claim for abuse of process to settle civil litigation and collect a $56,256.00 default judgment against him in an earlier action. While the allegations are inartfully drafted, paragraphs 72-81 of his First Amended Complaint allege that after defendants had initiated criminal prosecutions against Dillard, representatives of Security Pacific informed him that Security Pacific would have the criminal charges against plaintiff dropped if he would agree to pay them the $56,256.00 default judgment. Dillard also alleges that defendants subsequently offered to drop all criminal prosecutions and renounce all claims against him, including the $56,256.00 default judgment

claim, if Dillard agreed to discontinue this current civil litigation. First Amended Complaint, paras. 71-81, pp. 10-11 (Docket Entry No. 52). Such allegations, if true, would establish the elements of a claim for abuse of process.

Nevertheless all of Dillard's claims for abuse of process are time-barred under the applicable statute of limitations. Under Texas law the statute of limitations for abuse of process is two years. TEX. CIV. PRAC & REM. CODE $ 16.003 Vernon 1986); Hatch v. Reliance Insurance Co., 758 F.2d 409, 415 (9th Cir.), cert. denied, 106 8. Ct. 571 (1985). It is unclear from Dillard's pleadings and the record when he learned of defendant's attempt to use the criminal prosecutions to collect the default judgment and settle the instant action. However the Court concludes that at the very latest Dillard knew or should have known of defendants' attempts to abuse process on June 21, 1988, when the last

criminal charges against him were dropped. The Court finds that limitations began to run at that time. Since Dillard's First Amended Complaint was filed on October 5, 1990, his claim for abuse of process is barred by the limitation.

Defendant's motion to dismiss Dillard's claim asserting a cause of action under 18 U.8.C. $ 1951 is GRANTED, and this claim is DISMISSED because the statute does not provide a private cause of action. See Peterson v. Philadelphia Stock Exchange, 717 F. Supp. 332 (E.D.Pa. 1989).

Defendant's motion to dismiss Dillard's RICO claim is GRANTED, and this claim is DISMISSED WITHOUT PREJUDICE. To state a claim under RICO section 1964(c), a plaintiff must plead facts sufficient to show "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Montesano v. Sea First Commercial Corp., 818 F.2d 423, 424 (5th Cir. 1987); 18 U.8.C. $ 1962(C). A plaintiff must plead specific facts, not

mere conclusory allegations, to support each element of a RICO cause of action. Elliott v. Foufas, 867 F.2d 877 (5th Cir. 1989). Dillard's Amended Complaint is deficient as to each of these elements. First, the complaint is incomprehensible with respect to which matters constitute valid RICO claims against the respective defendants; the claimed RICO violations by the defendants are unidentifiable. Second, the complaint does not even approximate the pleading requirements for an enterprise, which is essential to establish a RICO action. Old Time Enterprises v. International Coffee Corp., 862 F.2d 1213, 1218 (5th Cir. 1989); Atkinson v. Anadarko Bank & Trust Co., 808 F.2d 438, 440-41 (5th Cir.) (per curiam), cert. denied, 107 S. Ct. 3276 (1987). Finally, the complaint does not allege with sufficient particularly at least two predicate acts of racketeering by defendants to establish a pattern of racketeering activity under the

statute. It is perhaps possible that a RICO claim may lie buried somewhere in the Dillard's complaint. However, the complaint does not state such a claim against defendants with sufficient particularly or intelligibility for a court or opposing party to understand whether a valid claim is alleged, and, if so, what that claim is.

Defendants' motion to dismiss Dillard's claims against defendants' "for damages to plaintiff due to . . . Title 42 violation of civil rights" is GRANTED, and these claims are DISMISSED WITHOUT PREJUDICE for failure to state a cause of action. To state a cause of action under the civil rights statute Dillard must allege facts with particularity that would, if proved, warrant the relief he seeks. Johnson v. Wells, 566 F.d 1016, 1017 (5th Cir. 1978). Mere conclusory allegations of a deprivation of civil rights such as those contained in Dillard's complaint are insufficient to withstand a motion to dismiss. Id.; Arseneaux v. Roberts, 726

F.2d 1022, 1024 (5th cir. 1982).

Defendant's motion to strike pursuant to Fed. R. Civ. P. 12(f) is GRANTED as to paragraphs 8-18, 21-23, 29, 40-45, 88-90, 94-108, 111, and 114-125 of Dillard's First Amended Complaint, and DENIED as to paragraphs 1, 2-5, 49-68, and 91-93.

Defendants' motion for a more definite statement pursuant to Fed. R. Civ. P. 12(e) is DENIED. Plaintiff's Second Motion for Stay & Consolidation (Docket Entry No. 56) is DENIED.

SIGNED at Houston, Texas, this 31st day of December 1990.

SIM LAKE
UNITED STATES DISTRICT JUDGE

Date of Entry: December 31, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
v.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
BROKERS, INC. and	$	
FINANCIAL CLEARING &	$	
SERVICE8 CORPORATION,	$	
	$	
Defendant.	$	

FINAL JUDGEMENT

In accordance with the courts Memorandum and Order, this action is DISMISSED.

This is a FINAL JUDGMENT.

SIGNED at Houston, Texas, on this 31st day of December, 1990.

SIM LAKE
UNITED STATES DISTRICT JUDGE

CIVIL DOCKET SHEET
H-88-2848

PLAINTIFF	DEFENDANT
CARVEL G. DILLARD	SECURITY PACIFIC CORP. et al

DATE	NR.	PROCEEDINGS
8-18-88	1	ORIGINAL COMPLAINT, with JURY DEMAND, filed. (7) SUMMONS, issued.
8-22-88	2	PETITION TO THE CHIEF JUDGE, filed. jlp dkt'd 8-24-88
9-12-88	3	DEFT MERRILL LYNCH'S MOTION TO DISMISS PLFT'S COMPLAINT AND FOR SANCTIONS, filed. bj dkt'd 9-13-88 M/D Oct 3, 1988 by Clerk.
	4	BRIEF IN SUPPORT OF DEFT MERRILL LYNCH'S MOTION TO DISMISS PLTF'S COMPLAINT AND FOR SANCTIONS, filed. bj dkt'd 9-13-88
	5	AFFIDAVIT OF KARL S. STERN, w/exhibits attached, filed. bj dkt'd 9-13-88
9-12-88	6	Defts Rule 12(e) MOTION for more Definite Statement and Rule 12(f) MOTION to Strike of Defts Jenkens & Gilchrist (A Professional Corporation), Jenkens & Gilchrist (A partnership), Security Pacific Corporation, Security Pacific Brokers, Inc., and Financial Clearing and Services Corporation and Brief in Support Thereof, filed. bj M/D 10-3-88 by clerk dkt'd 9-14-88

9-12-88	7	Local Rule 5 Disclosure of Related Litigation and Other Unusual Features, filed. bj dkt'd 9-14-88
9-12-88	8	Response of Jenkens & Gilchrist, A Professional Corporation, and Jenkens & Gilchrist, a Partnership, filed. bj dkt'd 9-14-88
9-12-88	9	Original Answer of Financial Clearing and Services Corporation, filed. bj dkt'd 9-4-88
9-12-88	10	Original Answer of Security Pacific Brokers Inc. dkt'd 9-14-88
9-12-88	11	Original Answer of Security Pacific Corporation, filed. bj dkt'd 9-14-88
9-15-88	12	Deft Securities Industry Association, Inc.'s MOTION to Dismiss Pltf's Complaint and Request for Sanctions, filed. bj M/D 10-3-88 by clerk dkt'd 9-16-88
10-3-88	13	Pltf's Memorandum in Opposition to Defts' Motions: To Compel More Definite Statement, To Impose Sanctions, to Dismiss, To Strike, filed. bj dkt'd 10-4-88
10-5-88	14	Deft Merrill Lynch's MOTION for Stay Pending Arbitration and to Compel Arbitration, filed. bj M/D 10-31-88 by clerk dkt'd 10-6-88

10-27-88	15	Pltf Carvel G. Dillard's Memorandum in Opposition to Deft Merrill Lynch's Motion for Stay Pending Arbitration and to Compel Arbitration, filed. bj dkt'd 10-28-88
12-14-88		NOTICE OF HEARING, mailed to all parties. Jan 3, 1989 at 11am mg/bj dkt'd 12-14-88
12-23-88		NOTICE OF HEARING TO BE HELD ON JAN 30, 1989 at 4:30pm, courtroom #7; HEARING SET 1-3-89 IS CANCELLED. MG/jlp dkt'd 12-28-88
1-19-89	16	Pltf Carvel G. Dillards MOTION for: Partial Summary Judgment and Injunctive Relief Docketing of Action H-86-3251 in this Court Inclusion of Title 42 Claims Sanctions, filed. bj dkt'd 1-24-89
1-25-89	17	Deft Merrill Lynch's Response to Pltf's Motion for Partial Summary Judgment and Sanctions, filed. bj dkt'd 1-26-89
1-30-89	18	(LNH) HEARING, filed. bj (Rptr-H. Chester) Appearances: pltf. = Dillard; deft. = Stern Goldberg, Stewart Deft Security Pacific Corp,; Securities Industry Assoc. Inc.; Security Pacific Broker Inc. and Financial Clearing and Service corp. are dismissed, Claims against Merrill Lynch and Jenkins & Gilchrist are abated until

		such time as Judge DeAnda rules on pleadings between the same parties in the associated case.
2-1-89		Rec'd Order of Dismissal, fwd/crd dkt'd 2-2-89 bj
2-2-89	19	(LNH) ORDER OF DISMISSAL AND ABATEMENT, entered. bj parties ntfd A. These defts are dismissed: Security Pacific Corp. Merrill Lynch, Pierce, Fenner & Smith, Inc. Security Pacific Brokers, Inc. Financial Clearing and Services Corp. B. The judgment is A is final under rule 54(b). C. The case is abated for these defts: Securities Industry Association, Inc. Jenkens & Gilchrist.
2-16-89	20	PLTF'S RULE 59 MOTION TO ALTER & AMEND THE ORDER OF DISMISSAL & ABATEMENT & IN THE ALTERNATIVE PLTF'S RULE 52 MOTION FOR FINDINGS OF FACT & CONCLUSIONS OF LAW, filed. bj M/D 3-6-89 dkt'd 2-17-89
3-30-89	21	(LNH) ORDER, entered. Parties ntfd. Carvel Dillard's motions to amend this court's order of Feb. 2, 1989, and for findings of fact and conclusions of law are DENIED. kg

4-19-89	22	(LNH) ORDER OF DISMISSAL AND ABATEMENT, entered. Parties ntfd. These Defts are dismissed: Security Pacific Corp Security Pacific Brokers, Inc. Financial Clearing and Services Corp. Securities Industry Association The judgement above is final under Rule 54b. This case is abated for these defts: Jenkens & Gilchrist Merrill Lynch, Pierce, Fenner & Smith Inc.
4-19-89		Rec'd letter from Atty Wendell A. Odom, Jr. in re: note being nor will be Mr. Dillard's atty. eod 4-20-89 by
4-27-89	23	(LNH) ORDER OF DISMISSAL AND ABATEMENT, entered. Parties ntfd. rt 1. These Defts are dismissed: Security Pacific Corp Merrill Lynch, Pierce, Fenner & Smith Security Pacific Brokers, Inc. Financial Clearing and Services Corp. Securities Industry Association 2. The judgement above is final under Rule 54b. This case is abated for these defts: Jenkens & Gilchrist
5-3-89	24	PLTF'S RULE 52 MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE COURTS SECOND ORDER OF DISMISSAL AND ABATEMENT OR IN THE ALTERNATIVE THIS IS A

		MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE COURT'S THIRD ORDER OF DISMISSAL AND ABATEMENT OR IN THE ALTERNATIVE THIS MOTION IS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE MOST RECENT OF THE PREVAILING ORDER OF DISMISSAL AND ABATEMENT, filed. jlp eod 5-10-89 M/D 5-29-89 by clerk
5-3-89	25	AFFIDAVIT OF CARVEL DILLARD, filed. jlp eod 5-10-89
5-24-89	26	(LNH) ORDER, entered. Parties ntfd. Carvel Dillard's motion for findings of fact and conclusions of law on the court's order of April 27, 1989 (item 24) is DENIED. kg
6-1-89	27	DEFENDANT SECURITY PACIFIC CORPORATION'S RESPONSE TO PLAINTIFF'S RULE 52 MOTION AND MOTION TO STRIKE AFFIDAVIT, filed. eod 6-2-89 cj
5-30-89	28	Pltf's NOTICE OF CONSOLIDATED APPEAL from Order of Dismissal on April 27, 1989, and Order entered on Mar 30, 1989, filed. bw dkt'd 6-1-89
5-30-89		Filing & Docketing Fees BOTH Paid. (Rec't #327485) bw
6-15-89	29	Pltf's DESIGNATION OF RECORD OF CONSOLIDATED APPEAL, filed. bw (Entire File)

6-15-89	30	Court Reporter's TRANSCRIPT ORDER FORM advising that the estimated completion date for filing the transcript is: Aug 12, 1989, filed. bw (Herman Chester)
6-22-89	31	Copy of LETTER from Court of Appeals to Court Reporter, advising that the transcript due date is: Aug 11, 1989, filed. bw (Herman Chester)
8-3-89	32	Transcript of January 30, 1989 by Herman Chester, filed. (rec'd in appeals section 8-16-89, paid 8-15-89) dkt'd 8-17-89 jd
8-17-89		Record on Appeal, consisting of three volumes of record and one volume of transcript, forwarded to the Court of Appeals. dkt'd 8-17-89 jd
1/31/90	33	Certified Copy of ORDER by Court of Appeals REMANDING for limited purposes of the district court stating the reasons and authority for entry of its three orders on Feb 2, 1989, April 19, 1989 and April 27, 1989, after which the matter will be resubmitted to this court for consideration, filed. bw dkt'd 2/1/90
1/31/90	34	Letter from Court of Appeals to Judge Hughes advising that the record is being returned for his use, and is to be ret'd w/supplemental when completed, filed. bw (file fwd to crd) dkt'd 2/1/90
1/31/90		CASE REOPENED bw

5-24-90	35	Certified copy of PER CURIAM by CCA ORDERING CCA order of limited remand is VACATED, and it is further ORDERED district court's judgments entered on 2-2-89, 4-19-89 and 4-27-89 are VACATED and the matter is REMANDED to the district court for entry of judgment, filed. eod 5-25-90 km
7/17/90	36	(LNH) Order entered, parties ntfd. vp These defendants are dismissed: A. Security Pacific Corp.; B. Security Pacific Brokers, Inc.: C. Financial Clearing & Svcs Corp.; and D. Securities Industry Assoc., Inc. The judgment is final under Rule 54(b). The case is abated for these defendants: A. Jenkens & Gilchrist and B. Merrill Lynch, Pierce, Fenner, and Smith, Inc., eod 7/17/90
7-17-90	37	(LNH) ORDER entered, parties ntfd. vp OPINION ON DISMISSAL AND ABATEMENT - see order for details.
8-13-90	38	Pltf's NOTICE OF CONSOLIDATED APPEAL from the Order entered on 7-17-90, filed. (fees not paid)
8-13-90	39	Pltf's MOTION TO EXTEND TIME FOR FILING OPPOSITION TO MOTION TO DISMISS, MOTION TO CONSOLIDATE H-88-2848 & H-86-3251 MOTION FOR STAY, filed. km

8-20-90		Mailed notice of filing appeal to all parties and CCA. km
8/24/90		Filing and docketing fees paid, $105.00, #354299 parties notified
10/5/90	40	Pltf's DESIGNATION OF RECORD OF APPEAL, filed. bw eod 10/1/90
10/11/90	41	(LNH) ORDER, entered. parties ntfd. bw Dillard's motion to consolidate CA-H-86-3251 and CA-H-88-2848 is not before me. The motion to consolidate pends in CA-H-86-3251 and will be ruled on by Judge Lake.
10-26-90		RECORD ON APPEAL RETURNED to the CCA for CCA 89-2583 and appeal filed 8-13-90 consisting of all original instruments. (3 volumes of record and 1 volume of transcript) km

Date of Entry: August 18, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD, Plaintiff	
V.	CIVIL ACTION (BY JURY) H-88-2848
SECURITY PACIFIC CORP.; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; SECURITIES INDUSTRY ASSOCIATION, INC.; SECURITY PACIFIC BROKERS, INC.; FINANCIAL CLEARING AND SERVICES CORPORATION; JENKENS & GILCHRIST (A PARTNERSHIP); AND JENKENS & GILCHRIST (A PROFESSIONAL CORPORATION), Defendants	

COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS:

Plaintiff, CARVEL G. DILLARD files this complaint against: SECURITY PACIFIC CORP.; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; SECURITIES INDUSTRY

ASSOCIATION, INC.; SECURITY PACIFIC BROKERS, INC.; FINANCIAL CLEARING AND SERVICES CORPORATION; JENKENS & GILCHRIST (A PARTNERSHIP); and JENKENS & GILCHRIST (A PROFESSIONAL CORPORATION), Defendants herein and asks for trial by jury. The Defendants have been served by U.S. Certified Mail, Return Receipt Requested, to their registered agent or through the good offices of the Secretary of State of Texas, each with copy of this Complaint and a summons that they be ordered to answer. Plaintiff prays that the Defendants be ordered to appear so that related claims can be adjudicated in a single jury trial. Plaintiff brings this civil action against the above named Defendants and demands permanent injunctive relief and damages by reason of Defendants' violation of: United States Federal Law, Texas State Law, Common Law and Law of Equity and would show the Court as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. #1332(A)(1) because it is a civil action between citizens of different states where the amount in controversy exceeds the sum of $10,000.00 exclusive of interests and costs and allegations of the violation of certain specific federal laws additionally confers subject matter jurisdiction.

2. Venue is proper in this district pursuant to 28 U.S.C. #1391(A) because the claims arose here.

II.

Description of the Parties

3. Plaintiff CARVEL G. DILLARD, herein ("MR. DILLARD"), a resident of Oregon, is a small investor and speculator and was a consumer of services provided by certain of the Defendants in Houston, Harris County, Texas.

4. Defendant, SECURITY PACIFIC CORP., herein ("S. PACIFIC"), is a corporation

organized under the laws of a state other than Texas which does business in Houston, Harris County, Texas, as well as other locations through its subsidiaries. SECURITY PACIFIC CORP.'S principal place of business is California. SECURITY PACIFIC CORP. is California's second largest bank holding company and it is engaged in the business of providing, among other things, banking, brokerage and financial services. SECURITY PACIFIC BROKERS, INC. is a subsidiary of SECURITY PACIFIC CORP. FINANCIAL CLEARING AND SERVICES CORPORATION is a subsidiary of SECURITY PACIFIC CORP. (both subsidiaries are organized under the laws of the State of Delaware), SECURITY PACIFIC CORP., SECURITY PACIFIC BROKERS, INC., and FINANCIAL CLEARING AND SERVICES CORPORATION are herein referred to as ("S. PACIFIC").

5. Defendant MERRILL LYNCH, PIERCE, FENNER AND SMITH, INC., herein ("M. LYNCH"), is a corporation organized under the laws of Delaware but it does business providing

brokerage and financial services in Houston, Harris County, Texas, as well as other locations.

6. Defendant SECURITIES INDUSTRY ASSOCIATION, INC. herein ("S.I.A.") is a corporation organized under the laws of a state other than Texas. It is the principal trade association of the securities industry. It has as members more than five hundred securities firms in the United States and Canada. A number of S.I.A.'s members provide brokerage services in Houston, Harris County, Texas and S.I.A. does business in Texas by providing membership services mostly by wire and U.S. Mail.

7. JENKENS & GILCHRIST is a Texas corporation and is both listed as a Defendant as a partnership and as a professional corporation because it is culpable for damages done while a partnership and for subsequent damages after time of incorporation. JENKENS &

GILCHRIST is a law firm and is herein complained of for knowingly participating in criminal conspiracy and knowing and deliberate commission of several felony crimes in conjunction with their representation of S. PACIFIC.

8. The illegal acts of the Defendant corporations were authorized, ordered, and accomplished by corporate officers, agents, employees or representatives while they were actively engaged in management, control, or direction of business activity.

9. Service of process in this litigation can be accomplished as follows:

CARVEL G. DILLARD, Plaintiff, Pro Se, through his attorney:

Wendell A. Odom, Jr.
SCHAEFFER, LAMBRIGHT & ODOM
3401 Louisiana, Suite 270
Houston, Texas 77002
(713) 529-1555

SECURITY PACIFIC CORP., Defendant, through the Secretary of State of Texas:

SECRETARY OF STATE
P. O. Box 12887, Capitol Station
Austin, Texas 78711-2887

TO:

Richard J. Flamson, III
Chief Executive Officer
SECURITY PACIFIC CORP.
333 South Hope Street
Los Angeles, California 90071

SECURITIES INDUSTRY ASSOCIATION, INC., Defendant, through the Secretary of State of Texas:

SECRETARY OF STATE
P. O. Box 12887, Capitol Station
Austin, Texas 78711-2887

TO:

Edward I. O'Brien
President
SECURITIES INDUSTRY ASSOCIATION, INC.
120 Broadway, 35th Floor
New York, New York 10271

MERRILL LYNCH, PIERCE, FENNER & SMITH INC., Defendant, through its registered agent:

C. T. CORPORATION
1601 Elm Street
Dallas, Texas 75201

SECURITY PACIFIC BROKERS, INC., Defendant, through its registered agent:

C. T. CORPORATION
1601 Elm Street
Dallas, Texas 75201

FINANCIAL CLEARING AND SERVICES CORPORATION, Defendant, through its registered agent:

C. T. CORPORATION
1601 Elm Street
Dallas, Texas 75201

JENKENS AND GILCHRIST (Corporation), Defendant, through its registered agent:

THOMAS H. CANTRILL
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2711

JENKENS AND GILCHRIST (Partnership), Defendant, through its managing partner:

THOMAS H. CANTRILL
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2711

III.

Co-Conspirators

10. Various other persons, firms and corporations not made Defendants herein have participated as co-conspirators with the Defendants in the offenses hereinafter charged and have performed acts and made statements in furtherance thereof. Said co-conspirators include, but are not limited to most of the individual members of S.I.A.

IV.

Trade and Commerce Involved

11. During the time period involved herein certain of the Defendant corporations sold for fees and commissions millions of dollars worth of stocks, bonds, options, and financial services out of and for the margin accounts of Plaintiff, MR. DILLARD, in Houston, Texas. The conspiracies and other crimes alleged herein had a substantial effect on said commerce. And the monopoly complained of has a substantial detrimental effect on the majority of all commerce in the United States occurring in stocks, bonds, and stock options.

Anti-Trust Offenses Charged

12. For many years past and continuing up to and including the date of the filing of this Complaint, the Defendants and co-conspirators have been engaged in an unlawful combination and conspiracy to restrain and in an unlawful combination and

conspiracy to monopolize, and the Defendants have attempted to monopolize and have monopolized, the interstate trade and commerce in stocks, bonds and stock options in violation of Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. Section 4) as amended entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, and Plaintiff claims private right of anti-trust action under the provisions of the Clayton Act (15 U.S.C.S.).

13. Defendants have unreasonably and illegally restrained the trade of Plaintiff and others by adopting and agreeing to use and in using exclusively uniform margin account contract provision mandating determination by arbitration of all claims and controversies arising under said contracts. There is an illegal group boycott by the members of S.I.A. by refusal to deal in order to force all margin customers into unjust arbitration

agreement. Margin accounts are in fact unavailable except by renouncing the rule of law and the courts in favor of arbitration.

14. There has been injury to MR. DILLARD'S business and to his property because of duress of threat to restrain trade of Plaintiff lest he sacrifice right of recovery by judicial determination of money stolen from Plaintiff by Defendants, and the restraint of the trade of MR. DILLARD was total. MR. DILLARD was in fact imprisoned for ulterior purpose in attempt to achieve collateral and unlawful objectives of the Defendants.

15. The direct result of Defendants' Sherman Act violations is to deprive Defendant of substantial monies currently due from Defendant to Plaintiff.

16. The certain result of Defendants' wrongful behavior is to line their own pockets with Plaintiff's money, which money, if not for the anti-trust law

violation, would be judicially commanded be paid to Plaintiff. The anti-trust violation was done willfully and deliberately by Defendants in order to prevent just recovery under the law of amounts they might steal.

17. Under Section 1 of the Sherman Act combination and conspiracy with competitors in unreasonable restraint of trade is charged against Defendants.

18. Under Section 2 of the Sherman Act monopolization of the securities brokerage business and conspiracy to monopolize is charged against Defendants.

19. Plaintiff additionally charges conspiracy by Defendants and their competitors in violation of the Sherman Anti-Trust Act by the Defendants in adopting and agreeing to use, and in using exclusively certain uniform contracts for securities trading containing provisions for the determination by arbitration of all claims and controversies arising under said contracts.

20. A plurality, indeed almost every brokerage company has taken concerted action by consensus or agreement to act together with it's competitors to unreasonably restrain the trade of any who do not renounce their rights under the law and agree instead to arbitrate in an unfair forum set up by Defendants and their co-conspirators which is rife with conflict of interest. The disputed trades took place in margin accounts and therefore proof of monopolization can be made by the total lack of opportunity to do anything but arbitrate disputes arising in each and every other of Defendant's competitor's customer's margin accounts. To the best of Plaintiff's knowledge and belief monopolization in the aforementioned regard is 100%; all evidence to the contrary is statistically insignificant and by design of the Defendants and their co-conspirators generally unknown and unavailable to the consumer.

21. Plaintiff will show that the similarity of behavior can, under the facts, only be attributed to an understanding among securities industry competitors to effect the restraint; their motivation being to restrict available services to Plaintiff so that he and others had no alternative but to sign unfair contract.

22. Defendants and their co-conspirators, in order to effect monopolization, acted with the intention that services be unavailable except on similar unfair terms and legal seminars, and legal bulletins of the conspirators' trade association, S.I.A., and other exchanges of information on model arbitration clauses and their intent to use them caused each individual company to know that others would act in conjunction with it to restrain the trade of those who refused to arbitrate. The brokerage companies contemplated the illegal action in illegal conspiracy through exchange of information and then executed the monopolization plan with full

knowledge of its probable anti-competitive effect.

23. The rule of reason dictates that we have here an unreasonable restraint of trade which by denial of necessary services by almost all of the providers of that service acts to deprive consumers of their property without recourse to the protection of law in violation of the Fourteenth Amendment to the United States Constitution. Indeed the arbitration clause acts as a fraudulent device by which the brokerage companies can steal and then hide their illegality in an unfair arbitration proceeding to which there is no appeal and no usable record for subsequent criminal prosecution.

24. The number of securities brokerage companies using the same arbitration clause in their margin agreements is so excessive that it does in fact constitute a group boycott by concerted refusal to deal in order to coerce their customers into an

unjust arbitration agreement which is illegal per se. The Defendants' participation in group boycott is illegal per se and Plaintiff does specifically declare that the arbitration agreement in this case is void because of group boycott.

25. The adhesion arbitration agreements are invalid and unenforceable due to violations of law and equity which are grounds for the revocation of any contract.

26. The securities industry is acting in concert in violation of the Sherman Act; their securities brokerage monopoly acts to restrain the trade of any who refuse to arbitrate. No one can trade in securities on margin without renouncing their freedom of contract and renouncing the protection of law for their property.

27. The contracts in question are adhesion contracts: it is a standard form offered to Plaintiff on a "Take it or leave it" basis without affording realistic opportunity to bargain and under such conditions that Plaintiff could not obtain the desired

services except by signing the form contract. Plaintiff had no choice as to its terms. Assent was not voluntary, it was coerced by the advantage of Defendants which was unlawfully exercised. Unlawful advantage of Defendants consisted of threat to prohibit trade of Plaintiff in securities. The threat constituted duress which induced Plaintiff to sign the contracts contrary to Plaintiff's will and to Plaintiff's detriment. Defendants' threat of restraint of Plaintiff's trade overcame Plaintiff's will and liberty of discretion to such an extent as to influence Plaintiff to act in a way that Plaintiff's judgement and discretion would condemn and prompt him not to do, if free from such influence.

28. Defendants' exploitation of unfair advantage in exempting itself from much of the consequences of its own negligence and illegal acts amounts to unfair protection of the interests of the Defendants in so

large a manner as to interfere with the public interest. If Plaintiff had been afforded the option to choose protection under the law or arbitration then the arbitration provision would be enforceable. But compelling a consumer to renounce his protection under the law upon pain of denial of services is contrary to public policy. If the desired services could be obtained from another brokerage house the Defendants might argue that Plaintiff did not have to trade with it and therefore the duress was not so extreme as to force compliance. But brokerage house services currently are, and at the time of contract were, unavailable to any consumer unless that consumer signs a virtually identical compulsory arbitration provision.

29. There is a conspiracy of brokerage houses to deprive buyers and sellers of securities of rights to due process and protection of law in securities transactions by restraint of trade and commerce in purchase and sale of

securities. Every major brokerage house has conformed to a uniform pattern of conduct in compelling the execution of a contract containing a compulsory arbitration provision. Plaintiff was unable to find any brokerage house large or small that does not impose upon its customers a contract stipulating compulsory arbitration as a precondition to business. Therefore choice even at another brokerage house was impossible.

30. Agreement, combination or conspiracy may be demonstrated in part from course of dealings warranting conclusion that conspirators had common design, meeting of minds or acted in concert and uniform participation by competitors in a particular system of doing business where each is aware of the other's activities, the effect of which is restraint of interstate commerce is indicative of unlawful conspiracy under the Sherman Act.

31. The United States brought suit in the

District Court of the United Stated for the Southern District of New York, attacking an adhesion arbitration clause. In an able opinion, Judge Thacher of that court held the arbitration clause of the contract to be unlawful as being in violation of the Sherman Anti-Trust Act, United States v. Paramount Famous Lasky Corporation, 34 F.(2d) 984, and entered a decree enjoining the Paramount Famous Lasky Corporation, from acting under the arbitration clause in the contract. The opinion and decree of the District Court was affirmed by the Supreme Court of the United States (Paramount Famous Lasky Corporation v. U.S., 282 U.S. 30, 51 S. Ct. 42, 75 L. Ed.

32. District Judge Thacher adjudged that: "Trade or commercial groups or traders generally may voluntarily impose on themselves standard forms of agreement which do not unduly restrict competition and thus restrain trade, and may agree that all controversies should be settled by arbitration so long as such agreements are

not sought to be imposed on others, regardless of their wishes, by coercive combinations having power to enforce their will.

The conspiracy charged in this case is predicated upon acts of the Defendants in adopting and agreeing to use, and in using exclusively, certain uniform contracts for the lease of motion picture films to theater owners throughout the United States, containing provisions for the determination by arbitration of all claims and controversies arising under said contracts.

...It had been the consistent policy of the distributors to refuse to deal with exhibitors who failed to arbitrate.... The coercive effect of this situation has undoubtedly been that, unless exhibitors submitted to arbitration...they have been unable to enter into new contracts.

...One can hardly imagine a more direct restraint upon trade than an agreement

between competitors in an open market not to trade except upon terms which they have fixed in advance.

...In judging the inherent character of the restraint one must look not only to the restraint voluntarily imposed upon the competitive activities of those who are in the combination, but also to the involuntary restraint imposed upon the freedom of outsiders to engage in trade under natural and normal conditions. It is therefore not enough to say that competition between distributors is keen and active, or even that it has been promoted and enhanced by what has been done, if, in fact, it can be seen that the freedom of others to engage in trade, to enter into normal commercial agreements, and to have recourse to the courts for their rights has been unduly restrained by the coercive and collective action of the Defendants. That competition between the distributors has been promoted by the adoption of the standard exhibition

contract, and that in many ways general trade conditions have been vastly improved, I have no doubt and so find. But the record is equally clear that all this good has been accomplished through the exercise of irresistible economic force consolidated by combination in the hands of the distributors, who collectively control the available supply of films and by virtue of this control have imposed their will upon the industry. By agreement of these distributors exhibitors who were not represented in the adoption of the uniform contracts have been constrained to accept their terms regardless of their wishes, and by the compulsory system of arbitration, sanctioned and enforced by the collective action of the distributors, have been constrained to perform the contractual obligations thus assumed. In fairness it cannot be said that the restraint imposed upon these exhibitors is voluntary because they accept and agree to be bound by the

contracts. They can have none other, because the Defendants have agreed that they shall not; and, unless something more than the mere acceptance of all they can get is shown, they must be said to have acted under an involuntary restraint, imposed and continued by the Defendants to the end that the contracts shall be signed and their terms obeyed. That such coercive restraint upon the commercial freedom of an exhibitor, who was neither represented nor consulted with reference to the agreement to adopt the standard form of contract, is undue and unreasonable, both at common law and under the Sherman Act, I cannot doubt. Gains resulting from such restraints to the industry as a whole do not in the eyes of the statute justify the vicarious sacrifice of the individual, even for the sake of bigger and better business. A State Legislature could not lawfully impose compulsory arbitration upon the motion picture industry. Wolff Packing Co. v. Court of Industrial Relations of State of

Kansas, 262 U.S. 522, 43 S. Ct. 630, 67 L. Ed. 1103, 27 ALR 1280. Much less should it be within the power of a combination of practically all the distributors to do so by coercion exercised through control of the available supply of films.

...The restraint, if not shown to have been voluntary on both sides, is oppressive, and therefore undue and unreasonable.

...Nothing that has been said should be taken in derogation of the right of trade or commercial groups, or of traders generally, to voluntarily impose upon themselves standard forms of agreement which do not unduly restrict competition and thus restrain trade, or to agree that all controversies arising between them shall be settled by arbitration. Such agreements dealing only with the rights of those who execute and intend to be bound by them are normal and usual, and are proper instruments in the lawful conduct of trade. It is only when such agreements are sought

to be imposed upon others, regardless of their wishes, by coercive combinations having the power to say 'Take what is offered or get nothing', that they become illegal."

33. The instant case is indistinguishable from the Paramount case in all essential elements concerning the arbitration clause.

34. Defendants' alleged right to force arbitration on all its customers whether they like it or not is in conflict with the Fourteenth Amendment to the United States Constitution, and deprives Plaintiff of his property and liberty of contract without due process of law.

35. Duress in inducement of arbitration agreement is proper ground for revocation under 9 USCS Sec. 2. See Hellenic Lines LTD v. Louis Dreyfus Corp. (1967, CA 2 NY 372 F2d 753).

36. The coercion and duress in the instant case consisted of illegal restraint of trade in violation of the Sherman Act. A Sherman Act violation in the signing of the

arbitration agreement voids that agreement. It is fact that the Defendants participate in a coercive combination with their brokerage industry competitors in obvious violation of Federal Anti-Trust Law.

37. By design no consumer shall anywhere trade securities unless he first renounce protection of law and accept arbitration. The consumer is by duress deprived of the right of voluntary contract making the compulsory arbitration provision no contract. It is more simply a unilateral declaration by the brokerage houses in concert; not a mutually agreed contract and as such it is null and void and has no force of law. Plaintiff's allegation of Federal Law violation is directed to the arbitration clause itself--not the contract generally. Please see: Prima Paint Corp. v. Flood and Conklin Mfg. Co. 388 U.S. 395, 406 (1967): "Accordingly, if the claim is an illegal act in the inducement of the arbitration clause itself--an issue which

goes to the 'making' of the agreement to arbitrate--the Federal Court may proceed to adjudicate. This position is consistent both with the decision in Moseley v. Electronic Facilities, 374 U.S. 167, 171, 172 (1963) and with the statutory scheme. As the 'saving clause' in Sec. 2 indicates, the purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so. To immunize an arbitration agreement from judicial challenge...would be to elevate it over other forms of contract--a situation inconsistent with the 'saving clause"', see 388 U.S. 403-404.

38. Federal policy suggesting that arbitration be encouraged did not give license for coercive combinations which operate in restraint of trade; nor does such a policy allow violation of Federal Anti-Trust Law in order to promote arbitration. Nor does it allow duress to be used in the making of an arbitration contract.

39. It has been established that claims under the Sherman Anti-Trust Act are inappropriate for arbitration. Please see American Safety Equipment Corp. v. J. P. Maguire & Co. (1968, CA2 NY) 391 F2d 821, 3 ALR FED 901.

40. In Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985), the Supreme Court pointed out by way of footnote that the decision expressed no view on the validity of arbitration provisions contained in adhesion contracts and that the issue was not addressed because it was not first raised in the lower courts and they thought it improper to address it in the first instance. However, the supreme Court has previously ruled that an arbitration provision contained in a contract of adhesion is null and void if it is imposed by a participant in powerful coercive combination which acts to restrain trade of those who fail to agree to arbitrate. Until and unless the Supreme Court reverses

itself on that decision it is the law. This case is in every particular exactly the same as the Paramount case as regards the agreement to arbitrate and therefore it must be treated under the law in the same manner. In order to validate their adhesion arbitration clause, Defendants must show that this case and the Paramount case are different. But they cannot, for they are the same as regards the adhesion arbitration clause.

41. Today a film exhibitor can contract for film rental without executing an arbitration agreement. An investor should also be able to deal with a brokerage house under the protection of law. The standard that this Court should impose is that arbitration provisions of brokerage contracts may not be enforced against the party which had no choice because of restraint of trade. Rejection or acceptance of compulsory arbitration by free choice could be shown upon the contract by the initialing of appropriate box. Similarly,

contracts for loans often used to include adhesion provision that insurance, often at high cost, be purchased by the borrower. Lending institutions must now allow the consumer to accept or reject this coverage, which is accomplished by the consumer initialing his choice in an appropriate box upon the contract. The court should require that if Defendant wants mandatory arbitration it must draft its contracts in such a way that the arbitration provision is not adhesion but rather is shown to be the free choice of the consumer. Once agreement to arbitrate is made, without duress, then and only then is the contract binding with the force of law and the courts to compel arbitration as per the Byrd decision.

42. The Supreme Court had to assume that no duress or compulsion by monopoly was involved in the making of the agreement to arbitrate in the Byrd case because that is the way the case came to them. However,

unlike the Byrd case, in the instant case there is allegation that the agreements to arbitrate are not valid or enforceable because of violations of law in the making of the agreement to arbitrate.

43. If the securities brokerage industry is allowed to place itself above the law by legislating by contract could not then any monopoly exempt itself from the rule of law by embracing an arbitration panel? Such a policy would be against the public interest. And therefore the arbitration contract in question in this case is void because it is against strong protective public policy concerns. There being no private consent to support a contract of adhesion, its legitimacy rests entirely on its compliance with standards in the public interest.

44. Defendants' adhesion arbitration clause must be declared void as a result of its imposition by monopoly in violation of Federal Law as per the Supreme Court's Paramount decision. Defendants should send

a contract addendum to their current customers allowing them to choose either arbitration or the courts in the event of future controversy. Legally, the customer must be able to choose either, at the customer's sole option, because voiding of the contract provision for compulsory arbitration due to compulsion by monopoly is not available to Defendants, although by the law of the Paramount case it currently is to Defendants' customers which includes Plaintiff in this case.

45. The Commodity Futures Trading Commission in 17 C.F.R. Section 180.3 voided arbitration agreements which, inter alia, are not voluntary. The record of Ames v. Merrill Lynch, Pierce, Fenner & Smith Inc. 567 F2d 1174 (1977) shows why: Because the brokerage houses admitted that if a trader did not sign a compulsory arbitration agreement he was not able to trade effectively and was thus squeezed out of the commodities market. Today we have

the exact same situation regarding trading securities in margin accounts: It is impossible to trade effectively in securities without a margin account and an investor cannot get one anywhere unless he signs a compulsory arbitration agreement.

46. The Court should recognize the gross violation of law exhibited by the securities industry when they legislate by adhesion contract and the Court should prohibit enforcement of compulsory arbitration by adhesion contract.

47. Things will become fair and equitable in securities trading only if a man chooses to arbitrate and signs a contract to that effect because he perceives it to be to his own advantage, which free choice and perceived advantage are the essence of a contract and an unfair adhesion demand upon pain of loss of necessary services is no contract and is contrary to the principles upon which this great nation was founded. And should the Court allow it in this instance what then prevents other coercive

combinations from setting up their own arbitration panels and by irresistible economic force and adhesion contract then exempting themselves from the rule of law?

VI.

Other Violations

48. MR. DILLARD had a margin account at M. LYNCH. ~~Pur~~suant to one scheme and continuing course of conduct M. LYNCH did steal money owned by MR. DILLARD out of his margin account in the aggregate value of over $250,000.00.

49. The scheme was a systematic looting of MR. DILLARD'S M. LYNCH margin account. Close to one million dollars was embezzled out of the account but clear theft is only proveable for $256,500.00 of the loss. Pursuant to the same scheme and continuing course of conduct S. PACIFIC did embezzle about $50,000 out of another of MR. DILLARD'S margin accounts and then S. PACIFIC attempted theft by extortion of $30,405.00. S. PACIFIC demanded, upon

threat of criminal prosecution, that the $50,000.00 that they embezzled by improperly debiting MR. DILLARD'S account be paid to them and additionally S. PACIFIC demanded, upon threat of criminal prosecution, payment of an additional $30,405.00 which they had no right or claim to--for a total demand of $86,661.00. When S. PACIFIC was unable to maintain criminal prosecution for theft of the $86,661.00, they then made a malicious, vague, and frivolous criminal complaint of theft of an unspecified exact amount. When the 184th District Court of Texas quashed that indictment, S. PACIFIC continued the malicious prosecution by making a malicious, vague and frivolous criminal complaint of theft of $8,000.00. Indictment for theft of the $8,000.00 was also dismissed upon MR. DILLARD'S motion.

50. This pattern of baseless repetitive claims is a badge of malicious prosecution. The Defendants undertook an illegal, improper and perverted use of criminal

process, a use neither warranted nor authorized by law and the ulterior motive or purpose was:

1) to hide M. LYNCH'S theft by attacking Plaintiff and impeding his ability to sue;

2) to protect adhesion arbitration by attacking Plaintiff and impeding his ability to sue;

3) for collection of an unlawful debt;

4) for extortion of money

5) for use as a club to force Plaintiff to abandon his civil litigation.

51. MR. DILLARD has endured several years of prosecution.

52. First criminal prosecution: Extortion threat by letter from District Attorney, herein ("D.A.") on August 28, 1984, indicating that S. PACIFIC had complained of theft of $86,661.25, proceeds which were supposed to be delivered by M. LYNCH, and that MR. DILLARD must pay $86,661.25 to S. PACIFIC plus a $225.00 fee within 10 days or MR. DILLARD would be jailed without additional notice.

53. Second criminal prosecution: Styled Texas v. Dillard #431068, for theft of unspecified amount of money from S. PACIFIC, indicted August 19, 1985, quashed September 16, 1987.

54. Third criminal prosecution: Styled Texas v. Dillard #484550, for theft of $8,000.00 from S. PACIFIC, indicted September 17, 1987, dismissed June 21, 1988.

55. The multiple criminal prosecutions were both an abuse of process and malicious.

56. This Court should issue order restraining Defendants from further harassment of Plaintiff and his family by repeated, no probable cause, indictment on the complaints of S. PACIFIC, under the supervision of JENKENS & GILCHRIST, and all due to the perfidy and collusion of M. LYNCH.

57. Malicious prosecution and abuse of process is charged against Defendants M. LYNCH, S. PACIFIC and JENKENS & GILCHRIST.

58. Malicious prosecution of MR. DILLARD

caused his father to be handcuffed and arrested and his brother was confronted with demand for identification from a pistol in hand officer upstairs inside his home.

59. M. LYNCH is directly connected to the malicious prosecution in part through the employee of S. PACIFIC who deliberately made an untrue affidavit, under JENKENS & GILCHRIST supervision, to elicit criminal prosecution of MR. DILLARD, in reward for which the same employee of M. LYNCH who looted MR. DILLARD'S account awarded him a job at M. LYNCH.

60. M. LYNCH falsely told the D.A. investigator that MR. DILLARD never had any money in his M. LYNCH account.

61. They are co-conspirators; and M. LYNCH, S. PACIFIC, and JENKENS & GILCHRIST are each guilty of the crimes of the other.

62. After refusing Defendants' extortion demand, MR. DILLARD was arrested and held five days in jail without bond at the time

when specific deadlines were pending in civil litigation.

63. The Defendants encouraged the D.A. to make a no bond request in a flagrant abuse of process in an attempt to prevent MR. DILLARD'S pleading in civil actions against them.

64. All criminal charges against MR. DILLARD have been quashed and dismissed.

65. But the prosecutions lasted for years, over the past year alone MR. DILLARD has been required to appear eighteen times in the 184th District Court.

66. The Defendants used the criminal prosecutions in an attempt to force MR. DILLARD to abandon his right of civil action against them.

67. Previously the conspirators had abused process by using the criminal prosecution in an attempt to extort money.

68. Aware that this Court was looking into the matter because of their receipt of the Court's order of June 21 in Civil Action H-86-3251, on June 28, 1988, S. PACIFIC sent

MR. DILLARD written offer to forgive the $56,256.00 default judgement and drop criminal charges for peace.

69. $256,500.00 of MR. DILLARD'S money was stolen;

70. MR. DILLARD'S family was arrested.

71. MR. DILLARD was arrested.

72. MR. DILLARD, a resident of Oregon, was forced to relocate to Texas in order to appear in criminal court every few weeks. There was cost of lawyers and bond. MR. DILLARD was forced to try to find employment in Houston. But the Defendants' defamation, slander, and libel injured and impeached the reputation of MR. DILLARD, and MR. DILLARD has had difficulty finding employment.

73. MR. DILLARD had been at the top of his profession of security services contractor before selling his company for millions of dollars.

74. Compelled to live in Houston while the long prosecutions continued, MR. DILLARD

found employment as General Manager of a security services contracting company at a salary of $65,000.00 a year plus a company car; and after two months on the job MR. DILLARD was given a Vice Presidency and promised $85,000.00 a year and stock options next year and asked to join the Board of Directors.

75. Upon disclosure of indictment, the company President gave MR. DILLARD a leave of absence to solve legal problems. After several months, MR. DILLARD'S position was filled by another man before the criminal charges were dismissed.

76. MR. DILLARD is well known in the security services industry and word of the criminal prosecution has gotten around. MR. DILLARD'S lifetime earnings potential is diminished and MR. DILLARD is affected injuriously in his occupation by the illegal actions of the Defendants.

77. The loss of time and costs, the embarrassment and humiliation, the mental vexation, and mental injury caused by the

three false criminal complaints, each made on the heels of the other, weigh heavily upon MR. DILLARD. MR. DILLARD asks for compensation for damage caused by Defendants' anti-trust conspiracy, thefts, extortion, abuse of process, malicious prosecution, libel and slander.

78. Subsequent to the theft from MR. DILLARD'S M. LYNCH account, he complained to M. LYNCH and from their response MR. DILLARD was led to believe that at least $256,500.00 would be returned into his M. LYNCH account. Instead, M. LYNCH reported to the United States Internal Revenue Service, herein ("I.R.S."), income to MR. DILLARD of over two and one-half million dollars for proceeds of sham Superior Oil ("S.O.C.") stock sale; a sham because M. LYNCH sold S.O.C. stock in behalf of MR. DILLARD prior to the carefully stipulated contractual delivery date to MR. DILLARD of that stock. M. LYNCH sold stock in MR. DILLARD'S behalf, which stock MR. DILLARD

had never received.

79. I.R.S. Revenue Officer Joy Jackson has stated that the trigger of an audit of three years of MR. DILLARD'S income was M. LYNCH'S report of this approximately two and one-half million dollars of revenue, which revenue MR. DILLARD had not reported to the I.R.S. The I.R.S. investigation concluded that MR. DILLARD owed no tax and motion for dismissal with prejudice has been agreed to by the U.S. Attorney. Action No. H-88-163 styled United States v. Dillard is currently before this Court on the U.S. Attorney's Motion to Dismiss.

80. When the lawsuit was initiated to collect the stolen monies M. LYNCH demanded arbitration and MR. DILLARD refused citing that under 9 U.S.C.A. Section 2, the Federal Arbitration Act, the arbitration clause in the margin contract is null and void because its execution was induced by illegal compulsion by monopoly. The lawsuit, #H-85-4135 was before Judge Singleton who did nothing and recused

himself and then before Judge Sterling, who died before issuing promised written orders and the case went to Magistrate Karen Brown, who did nothing and recused herself, and most recently it went to Magistrate George Kelt, who also has issued no order.

81. M. LYNCH conspired with S. PACIFIC and JENKENS & GILCHRIST to have S. PACIFIC criminally prosecute MR. DILLARD. The malicious prosecution was in part a retaliation for threatening the security industries' license to steal, their adhesion arbitration clause.

82. Brokerage companies uniformly demand arbitration when they are at risk but often contravene arbitration when it suits their interest. MR. DILLARD'S contract with S. PACIFIC, like the contract with M. LYNCH, mandates arbitration.

83. The State of Texas still holds MR. DILLARD'S $5,000.00 appearance bond money on the third criminal prosecution which should be ordered returned immediately.

84. M. LYNCH should be ordered to claim for themselves all the S.O.C. stock and option purchases allegedly done for MR. DILLARD'S account and to also claim the losses on the sale of the S.O.C. positions as well. Neither should be charged against the margin account of Plaintiff, yet they were. M. LYNCH should account to this Court for their S.O.C. stock and option positions as to number for 1983 and 1984, including disbursement and receipts of cash for same.

85. If the trade is not MR. DILLARD'S it has to belong to M. LYNCH, and MR. DILLARD will prove that the stock was sold before it was delivered and it was in fact never delivered. If it had been delivered it would have been used to fill third party contract. MR. DILLARD did not order it sold; he ordered it delivered. It was reported sold before delivery date of December 29, 1983. MR. DILLARD never got what he paid for. He never had the beneficial use of the stock. The December 29, 1983, date of delivery and payment was

ignored by M. LYNCH although they obtained formal permission from the Federal Reserve and from the exchange for an unusual payment on December 29, 1983 for the S.O.C. stock, which purchase date they required be guaranteed by purchase by MR. DILLARD of Guaranty insurance, consisting of purchase from or through M. LYNCH of $104,000.00 worth of puts, which had three months to run; all this was pursuant to a written third party contract which called for a December 29, 1983 delivery.

86. MR. DILLARD had for several years maintained a margin account with M. LYNCH for the purpose of trading in stocks, options, bonds and other securities at their offices at Greenway Plaza, Harris County, Texas (location at which untrue statement of material fact was made). Often MR. DILLARD maintained unusual financial arrangements with M. LYNCH by offering indemnification and it had been agreed that a trade was never to be done against the

wishes of MR. DILLARD if M. LYNCH could sustain no loss.

87. MR. DILLARD had, at an expense of over $150,000.00 for purchase of call options, acquired the right to purchase 52,000 shares of S.O.C. at $35.00 per share.

88. MR. DILLARD had requested that the terms of his payment for the S.O.C. shares be changed from payment due date of December 23, 1983, to payment due date of December 29, 1983 (the date theft was proven to MR. DILLARD).

89. On December 23, 1983 (date of untrue statement of material fact), MR. DILLARD was told by Steven A. McAnally, representing M. LYNCH, that payment on December 29, 1983, had been approved by the Self Regulatory Agency of the Exchange and by the Federal Securities and Exchange Commission and that M. LYNCH would also agree to December 29, 1983, payment date, but only if MR. DILLARD purchased Guaranty Insurance from M. LYNCH. Deals like this

had been done before by MR. DILLARD and M. LYNCH, much to M. LYNCH'S enrichment and much to MR. DILLARD'S loss, but M. LYNCH had always honored the carefully agreed details of the individual complex trade and there was a long-standing tradition of trust.

90. M. LYNCH told MR. DILLARD that insurance was necessary to eliminate the hazard of economic loss to M. LYNCH should the value of the stock decrease below what was owed and MR. DILLARD failed to pay on December 29 and if MR. DILLARD would agree to purchase from or through M. LYNCH about $104,000.00 worth of puts which gave the holder the right to sell 52,000 shares of S.O.C. at $35.00 per share; M. LYNCH could suffer no loss as a result of the granting of the extension of payment and would, therefore, certainly deliver to MR. DILLARD exactly 52,000 shares of S.O.C. on December 29, 1983 (untrue statement of material fact).

91. It was agreed by MR. DILLARD and M. LYNCH and M. LYNCH did purchase for the account of MR. DILLARD 520 S.O.C. March 17, 1984, expiration $35.00 puts as insurance to guarantee and warranty their mutual contract for payment for and delivery of the 52,000 S.O.C. shares.

92. M. LYNCH promised to hold both puts and stock in trust in MR. DILLARD'S account until December 29, 1983. On December 27, 1983, M. LYNCH told MR. DILLARD that it was taking some of the 52,000 shares of S.O.C. from MR. DILLARD'S account and was selling them for the purpose of settling an unrelated transaction.

93. The stock was never constructively received by MR. DILLARD. It was never under MR. DILLARD'S control and profitable disposition of the stock by MR. DILLARD was prevented by M. LYNCH, since MR. DILLARD'S third party contract absolutely required exactly 52,000 shares be in MR. DILLARD'S account on December 29, 1983.

94. MR. DILLARD pointed out to M. LYNCH

that equity in MR. DILLARD'S accounts was sufficient so that no liquidation was necessary to protect M. LYNCH from loss; and MR. DILLARD cited to M. LYNCH terms of contract and explained damages that would certainly result if all 52,000 shares of stock were not delivered to MR. DILLARD on December 29, 1983. MR. DILLARD'S objections were ignored and M. LYNCH sold some of the stock.

95. MR. DILLARD hand delivered a letter to M. LYNCH prior to the opening of the market on December 28 and watched Steven D. McAnally read the letter. The letter protested the wanton and capricious damage done by the partial sale of the previous day and the letter demanded that no additional S.O.C. shares be sold.

96. M. LYNCH continued to sell more of MR. DILLARD'S S.O.C. shares after the market opened on December 28, exhibiting scienter of reckless disregard and punitive conduct.

97. A total hedge was absolutely a no

forced sale situation; this principle was M. LYNCH'S and MR. DILLARD'S mutual agreement and contract.

98. M. LYNCH as fiduciary was bound not to wantonly harm the interest of MR. DILLARD.

99. But MR. DILLARD would still have some money in his M. LYNCH account even after the losses on the worthless put buy so the commission structure was changed to steal the remaining cash.

100. M. LYNCH'S actions prevented the on-time delivery and the beneficial use of the 52,000 shares of S.O.C. which had been guaranteed by M. LYNCH to MR. DILLARD. Loss to MR. DILLARD was caused by MR. DILLARD'S reliance on deception by M. LYNCH and MR. DILLARD'S reliance was justified due to previous history of thinly margined trades. MR. DILLARD had arranged by previous written contract with a third party the disposition of the S.O.C. stock. In order to execute the contract, it was imperative that all 52,000 shares be declared by MR. DILLARD to be on deposit in MR. DILLARD'S

margin account on December 29, 1983. MR. DILLARD was unable to make the required declaration and pledge of transfer as required by the terms of the third party contract because M. LYNCH did not deliver all the stock and 52,000 shares were not in the account on December 29.

101. Sale under the terms of the third party contract specified revenues to MR. DILLARD of at least $250,000.00 more than M. LYNCH credited to MR. DILLARD'S account as a result of M. LYNCH'S liquidations of the S.O.C. stock. In addition to the aforementioned $250,000.00 loss, MR. DILLARD lost in excess of another $250,000.00 in direct losses because of purchases of S.O.C. stock and S.O.C. stock options from or through M. LYNCH (losses total over $500,000.00). MR. DILLARD only claims $256,500.00 theft loss because although M. LYNCH stole both the $250,000.00 net loss on S.O.C. stock and options and the $250,000.00 value of the

stock delivery the two claims are equitably mutually exclusive; so MR. DILLARD only claims $256,500.00 rather than $500,000.00, although MR. DILLARD'S claim to either is valid.

102. M. LYNCH did illegally, unilaterally, award itself over $6,500.00 in extra commissions out of MR. DILLARD'S account. Under captive customer conditions M. LYNCH did grant itself commission increases out of MR. DILLARD'S funds, which had been entrusted to M. LYNCH'S care, in an eleventh hour looting of MR. DILLARD'S account before it passed from M. LYNCH'S control.

After receipt of copy of letter from MR. DILLARD to Steven D. McAnally dated December 28, 1983 (the second letter to M. LYNCH from MR. DILLARD of that date), Thomas W. Taylor, Vice President of M. LYNCH, did confer with MR. DILLARD on December 28 by telephone; Mr. Taylor did then apologize profusely for the commission increase because he had negotiated the

long-standing contract with MR. DILLARD and he had recently reconfirmed the commission structure when MR. DILLARD had told Mr. Taylor that MR. DILLARD was considering changing brokerage houses. Mr. Taylor then said to MR. DILLARD that he was helpless to prevent or rescind the increase in commissions; although he then confirmed the legal contract rate as well as the illegal overcharges and said that the overcharge was ordered by Mr. McAnally.

103. In order to facilitate the theft M. LYNCH did use instruments of transportation and communication in interstate commerce including the mails.

104. M. LYNCH did not have 52,000 shares of stock on delivery date, December 29, 1983 because they had sold some of the shares. Delivery as contracted for by MR. DILLARD was quite obviously impossible.

VII.

R. I. C. O.

105. Theft or fraud in sale of securities

qualifies as "racketeering activity within meaning of Racketeer Influenced and Corrupt Organizations Act" 18 U.S.C.A. Sec. 1961 (1) and Plaintiff charges Defendants herein with theft and fraud in sale of securities and other crimes under Federal R.I.C.O.

106. The pattern of several acts by M. LYNCH include but are not limited to:

1) the theft of thousands of dollars in commissions by fiat increase in rate of commissions on sham transactions in S.O.C. stock and options in MR. DILLARD'S margin account;

2) the non-delivery of the stock;

3) the sale of call stock options that were good in that they were used to buy the stock, worthless in that the stock bought was never delivered; so they were worthless;

4) the sale of put options that were totally worthless in that they did not guarantee as M. LYNCH promised that M. LYNCH would not sell the S.O.C. before December 29, 1983. They were a theft and fraud; a worthless transaction.

107. S. PACIFIC is guilty of extortion under color of official right in that they demanded $86,661.00 on false affidavit and used the color of official right, the power

of the State of Texas, to accomplish the extortion. MR. DILLARD was ordered to pay $30,405.00 that S. PACIFIC has no right or claim to whatsoever in addition to $56,256.00 claimed but not lawfully owed lest the full power of the State of Texas harass and oppress him, MR. DILLARD refused to pay this extortion demand; he was arrested.

108. MR. DILLARD charges violation of the Hobbs Act against Defendants.

109. S. PACIFIC is guilty of attempting theft by extortion threat of criminal prosecution, which is punishable as theft.

110. S. PACIFIC is guilty of extortion, U.S.C.A. 18 Section 151, Note 133.

111. S. PACIFIC is guilty of conspiracy to interfere with interstate commerce by extortion, U.S.C.A. Section 1951, Note 11.

112. The three false theft charges were done to harass and oppress and were carried on either to compel payment of, or in retaliation for refusal to meet Defendants' extortion demand.

113. JENKENS & GILCHRIST is liable for knowingly prosecuting three groundless actions to accomplish malicious purpose of its client.

114. Certain methods such as the aforementioned extortion threat, used by JENKENS & GILCHRIST and by S. PACIFIC under the direction of JENKENS & GILCHRIST to accomplish malicious purpose were criminal.

115. JENKENS & GILCHRIST, M. LYNCH, and S. PACIFIC met at various times and conferred by telephone and in writing concerning concerted action against MR. DILLARD.

VIII.

Damages

116. The unlawful acts and practices of Defendants described herein were unconscionable, manipulative, deceptive, fraudulent and criminal. Defendants' illegal actions were performed knowingly, adversely affected Plaintiff and were a producing cause of damages to Plaintiff. Plaintiff seeks to recover the amount of

money which, if paid in cash, would compensate Plaintiff for such damages. Plaintiff asks that the Court award him the cost of the thefts, plus pre-judgement and post-judgement interest as provided by law, plus reasonable attorney's fees pursuant to Article 2226 of the Texas Revised Civil Statutes, plus all costs including costs of court.

117. The thefts, multiple felonies, and reckless disregard for Plaintiff's rights committed by Defendants and their agents warrant the awarding of punitive and exemplary damages and the R.I.C.O. Statutes mandate trebled damages. The character of Defendants' acts, the nature and extent of the harm to Plaintiff, and the large wealth of Defendants require the awarding of substantial punitive and exemplary damages.

118. Plaintiff requests that the Court entitle him to obtain from Defendants no less than $256,500.00 cost of theft, plus at least $135,000.00 interest, plus

$27,000.00 costs, all trebled for a subtotal of $1,255,500.00 and added to the $1,255,500.00 Plaintiff prays that the Court shall award additional amounts of $7,000,000.00 for mental injury and $5,000,000.00 for harm to reputation and $4,000,000.00 for harm to profession, all trebled for a subtotal of $48,000,000.00. Plaintiff prays for a total judgement for Plaintiff and against Defendants of $49,255,500.00.

IX.

Prayer

WHEREFORE, THE PLAINTIFF PRAYS:

119. That the Court adjudge and decree that the Defendants have combined and conspired to restrain and monopolize, have attempted to monopolize, and have monopolized interstate commerce in the securities brokerage services industry, in violation of Sections 1 and 2 of the Sherman Act.

120. That each of the Defendants, their officers, directors, agents and employees, and all persons acting or claiming to act

on behalf of the Defendants or any of them, be perpetually enjoined from continuing to carry out, directly or indirectly, the aforesaid combinations and conspiracies to restrain and to monopolize, attempt to monopolize and monopolization of, the aforesaid interstate commerce in the securities brokerage services industry and that they be perpetually enjoined from engaging in or participating in practices, contracts, agreements, or understandings, or claiming any rights under provisions of adhesion arbitration clauses.

121. That the Court enter appropriate orders to assure that arbitration clauses in brokerage margin contracts must show that the consumer was offered arbitration as a binding if accepted but refusable option and that services cannot be denied if the consumer initials no compulsory arbitration and prefers that all transactions in his margin account meet the requirements and rule of law through the

Courts in the event of dispute.

122. That all Defendants be required to terminate all agreements between or among themselves and that they be enjoined from continuing to observe provisions contained in agreements previously existing between or among themselves; in order to restore competition in the securities brokerage services industry.

123. That the Defendants be assessed culpability as follows: M. LYNCH, S. PACIFIC, and JENKINS & GILCHRIST must jointly and severally pay judgement to MR. DILLARD because of common guilt by conspiracy.

124. That a class action is superior to other available methods for the fair and efficient adjudication of the controversy over the anti-trust violations. (Under Rule 23 of the Federal Rules, MR. DILLARD hereby moves that this Court declare a class to be composed of all the customers of S.I.A. member companies in the United States who have margin accounts with adhesion

arbitration clauses; in the alternative, the class can be composed of only those customers in the Southern District of Texas, at the Court's discretion. In fact the monopoly complained of is pervasive throughout all regions of the United States.)

125. That pleading damages for the class may be reserved until trial.

126. That S.I.A. must distribute to each of its members within the designated class area copy of court order informing them that they must notify securities brokerage margin customers that the customer may elect for arbitration or judicial determination of disputes at the customers' sole discretion via the court ordered mailout contract addendum.

127. That S.I.A. would be found guilty only of anti-trust law violations.

128. That Defendants be cited to answer and appear herein and that the Honorable Judge and jury of this Court declare that

Defendants, S. PACIFIC, M. LYNCH, and JENKENS & GILCHRIST must jointly and severally pay to Plaintiff MR. DILLARD, judgement of $49,255,500.00. And Plaintiff prays for all other and further relief general or special, at law or in equity, to which Plaintiff may be justly entitled, and for all other and further proper relief.

Respectfully submitted,

CARVEL G. DILLARD,
Plaintiff

Process can be served and communication made with Plaintiff, CARVEL G. DILLARD, Plaintiff, Pro Se, through attorney:

Wendell A. Odom, Jr.
SCHAEFFER, LAMBRIGHT & ODOM
3401 Louisiana, Suite 270
Houston, Texas 77002
(713) 529-1555

Date of Entry: February 2, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
Plaintiff,	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER OF DISMISSAL AND ABATEMENT

A. These defendants are dismissed:

Security Pacific Corporation

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Security Pacific Brokers, Inc.

Financial Clearing and Services Corporation.

B. The judgment in A is final under Rule 54(b).

C. The case is abated for these defendants:

Securities Industry Association, Inc.

Jenkens & Gilchrist.

Signed on January 31, 1989, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: March 30, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER

Carvel Dillard's motions to amend this court's order of February 2, 1989, and for findings of fact and conclusions of law are denied.

Signed on March 27, 1989, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: April 19, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER OF DISMISSAL AND ABATEMENT

A. These defendants are dismissed:

Security Pacific Corporation

Security Pacific Brokers, Inc.

Financial Clearing and Services Corp.

Securities Industry Association, Inc.

B. The judgment in A is final under Rule 54(b).

C. The case is abated for these defendants:

Jenkens & Gilchrist

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Signed on April 10, 1989, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: April 27, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff	$	
	$	
VS	$	C.A. No. H-88-2848
	$	
SECURITY PACIFIC	$	
CORP., et al,	$	
	$	
Defendants	$	

ORDER OF DISMISSAL AND ABATEMENT

A. These defendants are dismissed:

Security Pacific Corporation

Merrill Lynch, Pierce, Fenner & Smith, Inc

Security Pacific Brokers, Inc.

Financial Clearing and Services Corp.

Securities Industry Association, Inc.

B. The judgment in A is final under Rule 54(b).

c. The case is abated for this defendant.

Jenkens & Gilchrist.

Signed on the 31st day of March, 1989, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: May 24, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER

Carvel Dillard's motion for finding of fact and conclusions of law on the court's order of April 27, 1989 (item 24) is denied.

Signed on May 22, 1989, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: January 31, 1990

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 89-2583
Summary Calendar
CA-H-88-2848

CARVEL DILLARD,

Plaintiff-Appellant,

VERSUS

SECURITY PACIFIC CORP., ET AL,

Defendants-Appellees.

Appeal from the
United States District Court
For the Southern District of Texas
(CA-H-88-2848)
(January 26, 1990)

Before GEE , SMITH and DUHE, Circuit Judges.

DUHE, Circuit Judge.

It is ordered that this matter be and it is hereby REMANDED for the limited purpose of the district court stating the reasons and authority for the entry of its three orders on February 2, 1989, April 19,

1989 and April 27, 1989, after which the matter will be resubmitted to this Court for consideration.

Date of Entry: May 22, 1990

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 89-2583

CARVEL DILLARD,

Plaintiff-Appellant,

VERSUS

SECURITY PACIFIC CORP., ET AL,

Defendants-Appellees.

Appeal from the
United States District Court
For the Southern District of Texas

Before GEE, SMITH and DUHE, Circuit Judges.

PER CURIAM:

The district court entered judgment in this matter on February 2, 1989. Sua sponte, and without stated reasons, the district court entered additional judgments herein on April 19, 1989 and April 27, 1989, which are inconsistent with the judgment entered on February 2, 1989, and

with each other. This court remanded the matter to the district court for the limited purpose of stating its reasons for the judgments and the authority under which they were rendered. Despite the lapse of an appropriate period of time the district court has not acted. Accordingly:

IT IS ORDERED that this Court's order of limited remand is VACATED.

IT IS FURTHER ORDERED that the district court's judgments entered on February 2, 1989, April 19, 1989, and April 27, 1989 are hereby VACATED and this matter is REMANDED to the district court for the entry of judgment.

Date of Entry: July 17, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
versus	$	CIVIL ACTION
	$	No. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER OF DISMISSAL AND ABATEMENT

1. These defendants are dismissed:

   A. Security Pacific Corporation;
   B. Security Pacific Brokers, Inc.;
   C. Financial Clearing and Services Corporation; and
   D. Securities Industry Association, Inc.

2. The judgment in 1 is final under Rule 54(b).

3. The case is abated for these defendants:

   A. Jenkens & Gilchrist and
   B. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Signed on July 6, 1990, at Charlottesville, VA.

Lynn N. Hughes
United States District Judge

Date of Entry: July 17, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CARVEL G. DILLARD,	$	
	$	
Plaintiff	$	
	$	
versus	$	CIVIL ACTION
	$	NO. H-88-2848
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

OPINION ON DISMISSAL AND ABATEMENT

After a hearing on January 30, 1989, the court entered three successive orders, on January 31, March 31, and April 10, dismissing four of the defendants and abating the case against two of them.

The last order dismissed these defendants and made the dismissals final:

(1) Security Pacific Corporation;
(2) Security Pacific Brokers, Inc.;
(3) Financial Clearing and Services Corporation; and
(4) Securities Industry Association, Inc.

That order also abated the case against these defendants:

(5) Jenkens & Gilchrist; and
(6) Merrill Lynch, Pierce, Fenner & Smith, Inc.

Dillard appealed these orders, and the court of appeals remanded the case for the limited purpose of allowing this court to state its reasons and authority for the entry of the orders. The court of appeals later vacated the orders.

The transcript of the January 30, 1989, hearing was part of the record on appeal. As the court stated in the transcript on pages 25-27, the reasons for the orders are:

1. Security Pacific Corporation, Security Pacific Brokers, Inc., and Financial Clearing and Services Corporation were dismissed because the claims against them were pending in Dillard v. Security Pacific Brokers, Inc. and Financial Clearing an Services Corporation, Civil Action No. 86-325 1, an earlier case filed by Mr. Dillard. Civil Action No. 86-3251 was stayed by Judge Lake on October 27, 1989, pending the decision of the court of appeals in this case.

2. Securities Industry Association, Inc., was dismissed for failure to state a claim against it. The Association could have been a clearinghouse for price fixing

information, but Dillard did not make that allegation. The Association is not a market participant, and Dillard failed to allege facts that it was a conduit for conspiratorial anti-competitive pricing or monopolization. This lack of sufficient factual allegations constitutes failure to state a claim against the Association for antitrust violations.

3. The case against Jenkens & Gilchrist was abated until Judge Lake ruled on Dillard's motion to amend his complaint to add Jenkens & Gilchrist as a party in Civil Action No. 86-3251. On October 27, 1989, Judge Lake stayed No. 86-3251 pending the decision of the court of appeals in this case.

4. The case against Merrill Lynch, Pierce, Fenner & Smith, Inc., was abated until Dillard moves to, and receives a negative ruling on a motion to, amend his complaint in Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Civil Action No. 85-4135, to include the claims asserted here in that case, because it involves related claims against Merrill Lynch. Judge Lake stayed Civil Action No. 85-4135 on September 6, 1989, pending the outcome of arbitration, and ordered the parties to begin arbitration and dismissed the complaint in a final judgment on February 2, 1990.

The transcript of the hearing is complicated. The cases were assigned to the late Judge Sterling, then placed on an

unassigned docket after his death, and then were handled by several judges before Judge Lake received them. While the district court regrets having to amend its order several times, when someone sues numerous parties on several claims in multiple cases, untangling the web of parties and claims to determine which parties and which claims properly belong in which cases often is as confusing as the pleadings.

Signed on July 6, 1990, at Charlottesville, Virginia.

Lynn N. Hughes
United States District Court

Date of Entry: October 11, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
versus	$	CIVIL ACTION
	$	No. H-88-2848
SECURITY PACIFIC	$	
CORP., et al,	$	
	$	
Defendants.	$	

O R D E R

Dillard's motion to consolidate Civil Action 86-3251 and Civil Action 88-2848 is not before me. The motion to consolidate pends in Civil Action 86-3251 and will be ruled on by Judge Lake.

Signed on October 4, 1990, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Date of Entry: August 2, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
vs.	$	CIVIL ACTION
	$	NO. H-86-3251
SECURITY PACIFIC	$	
CORP., et al.,	$	
	$	
Defendants.	$	

ORDER

The Court ORDERS that the above referenced cause is TRANSFERRED back to the docket of the Honorable Ross Sterling.

Done this 2nd day of August, 1988, at Houston, Texas.

J. DeAnda
United States District Judge

Date of Entry: August 13, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARVEL G. DILLARD,	$	
	$	
Plaintiff,	$	
	$	
v.	$	NO. H-88-2848
	$	
SECURITY PACIFIC CORP.;	$	
MERRILL LYNCH, PIERCE,	$	
FENNER & SMITH INC.;	$	
SECURITIES INDUSTRY	$	
ASSOCIATION, INC.;	$	
SECURITY PACIFIC	$	
BROKERS, INC; FINANCIAL	$	
CLEARING AND SERVICES	$	
CORPORATION; JENKENS &	$	
GILCHRIST (A	$	
PARTNERSHIP); AND	$	
JENKENS & GILCHRIST	$	
(A PROFESSIONAL CORP.	$	

C. G. DILLARD,	$	
	$	
v.	$	NO. H-85-4135
	$	
	$	
MERRILL LYNCH, PIERCE,	$	
FENNER & SMITH, INC.	$	

NOTICE OF CONSOLIDATED APPEAL

Notice is hereby given that Carvel Gordon Dillard, Plaintiff above named, hereby appeals to the United States District Court of Appeals for the Fifth

Circuit in the aforementioned actions in consolidated appeal.

Plaintiff hereby gives notice of Appeal:

H-88-2848

Of the orders of final dismissal and abatement entered in this action on July 17, 1990 and of the refusal to issue an injunction.

H-85-4135

Of the orders of final dismissal filed February 1 and February 2, 1990 and from the orders confirming dismissal filed August 6, 1990 and of the refusal to issue an injunction and certain other interlocutory decisions.

This filing is intended to give notice of appeal rather than elaborate upon the issues of appeal and a subsequent filing will list the issues. This appeal is made under 28 U.S.C.S. 1292 (A) as well as 28 U.S.C.S. 1291.

Respectfully submitted,

C. Gordon Dillard
903 SW Central
Grants Pass, Oregon 97526
1-503-479-0098
1-503-479-8686

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing: Notice of Consolidated Appeal has been sent by U.S. Certified Mail, Return Receipt Requested to:

Karl S. Stern
VINSON & ELKINS
3300 First City Tower
1001 Fannin
Houston, TX 77002-6760

Steve Stewart
JENKENS GILCHRIST
900 Interfirst Plaza
1100 Louisiana
Houston, TX 77002

Michael S. Goldberg
BAKER & BOTTS
3000 One Shell Plaza
910 Louisiana
Houston, Texas 77002

on this 10th day of August, 1990.

C. Gordon Dillard